

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSHUA CHATWIN,)
)
 PLAINTIFF,) CASE NO.
) 2:14-cv-00375
)
 Vs.)
)
 DRAPER CITY; OFFICER J. PATTERSON,)
)
 IN HIS INDIVIDUAL AND OFFICIAL)
 CAPACITY; OFFICER DAVID HARRIS, IN)
 HIS INDIVIDUAL AND OFFICIAL)
 CAPACITY; OFFICER HEATHER BAUGH, IN)
 HER INDIVIDUAL AND OFFICIAL)
 CAPACITY; AND JOHN DOES 1-10.)
)
 DEFENDANTS.)

Deposition of Kathy Torrence

Taken: November 19, 2015

Reported by: Linda J. Smurthwaite, RDR

Intermountain Court Reporters
Murray, UT 84107
(801) 263-1396



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1 Deposition of Kathy Torrence, taken on behalf of
2 Defendant, at 111 So. Broadway, Salt Lake City, Utah, on
3 November 19, 2015, commencing at 9:00 AM, before LINDA J.
4 SMURTHWAITE, Certified Shorthand Reporter, Registered
5 Professional Reporter and Notary Public in and for the
6 State of Utah, pursuant to Notice.

APPEARANCES

8 FOR THE PLAINTIFF: CLYDE SNOW & SESSIONS, P.C.
9 BY: Lisa A. Marcy
10 201 So. Main Street
11 13th Floor
12 Salt Lake City, UT 84111

13 JOHN K. JOHNSON
14 10 West 300 South
15 Suite 800
16 Salt Lake City, UT 84101

17 FOR DEFENDANTS: DURHAM, JONES & PINEGAR
18 BY: Ashley Gregson
19 111 E. Broadway
20 Suite 900
Salt Lake City, UT 84111

Mike Barker
Draper City Attorney
1020 E. Pioneer Road
Draper, UT 84020

Libby Lowther
Videographer: Gavin Bohne

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Salt Lake City, Utah, November 19, 2015, 9:17 a.m.

VIDEOGRAPHER: This is the videotape deposition of Kathy Torrence, in the matter of Chatwin verse Draper City, being held in the law offices of Durham, Jones and Pinegar in Salt Lake City, Utah, on November 19, 2015. The time is 9:17 a.m. My name is Gavin Bohne, certified legal videographer. The court reporter is Linda Smurthwaite, with Intermountain Court Reporters.

Would counsel please state their appearances for the record, and the witness will then be sworn.

MS. GREGSON: Ashley Gregson for the defendant.

MS. MARCY: Lisa Marcy for Josh Chatwin.

KATHY TORRENCE

was duly sworn, was examined and testified as follows:

BY MS. GREGSON:

Q. So Kathy, thank you for being here. Could you please state your name and spell it for the record?

A. **Kathy Torrence, K-a-t-h-y T-o-r-r-e-n-c-e.**

Q. Great. Have you ever been deposed before?

A. **No.**

Q. Okay. So, I want to just kind of go over some ground rules, if that's okay with you, so it will go smoother. So first of all, Linda here is taking down everything we say, so let's make sure that we speak

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audibly.

A. Okay.

Q. When you answer my questions, a shake of the head or un-huh isn't going to translate well to the transcript.

A. Gotcha.

Q. So, you have to know, audible responses would be great.

A. Okay.

Q. Also, you just took an oath; that oath is the same as the oath that you would take in a courtroom.

A. Okay.

Q. So you need to be accurate and truthful as you can possibly when you answer questions, okay?

A. Okay.

Q. Okay. And another thing, since Linda is taking down everything we say, we should try not to interrupt each other. She can't write down what we're both saying if we're talking at the same time, right?

A. Gotcha.

Q. So, I'll finish my question if you'll let me finish, and then I'll try not to interrupt you when you're giving your answers, okay?

A. Okay.

Q. Awesome. Another thing is, you may hear

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objections during this deposition, from either Lisa or myself. So, what you need to do when you hear an objection, is just let the lawyer finish their objection, and go ahead and answer the question. So, if you'll make sure to give her the time to say her objection, so that we're not speaking over each other, that would be great.

The other thing is, my job here today is just to find out as much information as I can from you. I'm just asking you questions so I can learn. I'm not going to try to trick you or, you know, make you say something that's not true. Obviously we want the truth. So if you don't understand one of my questions, please ask for clarification, okay?

A. Okay.

Q. Awesome. And if you ever need to take a break, we can totally do that, just let us know. And we would just ask if there's a question pending, answer the question first, and then we can take a break. Okay?

A. Okay.

Q. Awesome. So, what did you do to prepare for your deposition today?

MS. MARCY: Ashley, before we start, just wanted to

--

MS. GREGSON: Oh, put on the record --

MS. MARCH: -- put on the record that John Johnson

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is here for Josh Chatwin as well.

MS. GREGSON: Great. I should probably mention that we have Libby Lowther and Mike Barker here as well for the defendants.

Q. Okay. So, when you were preparing for your deposition today, what did you do?

A. I just read the, I guess it's called a brief?

Q. Okay.

A. Of the transcripts. I just read that.

Q. So you read transcripts from where?

A. This. What's it called?

Q. Is that --

A. From the Court.

Q. Okay. Is that the transcript from when you testified at Josh's criminal proceeding?

A. Un-huh.

Q. Okay. Anything else that you read before coming today?

A. No.

Q. Okay. Did you reread any of your written statements that you made? I see you have those there, I think?

A. Yes.

Q. Okay. So --

A. I read all this stuff, un-huh.

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Q. So did you speak with anyone in preparation for your deposition?

A. No.

Q. Okay. These are just some standard questions I need to go through with you. Have you ever been convicted of a crime?

A. No.

Q. Have you ever been sued?

A. No.

Q. Have you ever sued someone?

A. No.

Q. Okay. Have you ingested any substances today that would impede your ability to testify?

A. No.

Q. Haven't drank any alcohol recently, haven't taken any illicit drugs?

A. No.

Q. No prescriptions that would impair your ability to remember anything?

A. No.

Q. Okay. I want to go through your employment and just a little bit about your background.

A. Un-huh.

Q. So, what was your highest level of education?

A. Some college.

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Q. Okay.

A. **College classes.**

Q. Did you graduate college?

A. **No.**

Q. So when you stopped taking college classes, what was your first full-time job?

A. **I don't understand the question.**

Q. I just want to go through your employment history. So around the time you were taking college classes, where were you working?

A. **I guess Broadway.**

Q. The Broadway?

A. **Department store.**

Q. Oh, okay. Where was that?

A. **California.**

Q. Where in California?

A. **Montclair.**

Q. Montclair. After that, how long did you work there?

A. **I don't remember.**

Q. Okay. After that, where did you work?

A. **A company called DMV.**

Q. And --

A. **DME.**

Q. DME?

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A. **Un-huh.**

Q. Where was that?

A. **Monterey Park, California.**

Q. And after that?

A. **I think I worked for Cast and Clever Construction at Rancho Cucamonga.**

Q. And what were you doing there?

A. **I was assistant project manager.**

Q. Okay. And how long did you work there?

A. **I don't remember.**

Q. Okay. After that, where did you work?

A. **Then I went to the International Air Academy for training, and I went to work for America West Airlines.**

Q. Where were you living when you worked for America West?

A. **LA, then Phoenix.**

Q. Okay. And after America West?

A. **Delta.**

Q. Delta. Okay, are you still working for Delta now?

A. **Yes.**

Q. That's what I thought. How long have you been working for Delta?

A. **25 years.**

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Q. That's great. Have you been living in Utah the whole time you've been working for Delta?

A. **No.**

Q. Okay. Can you tell me where you lived after -- from Phoenix on, the places you've been living?

A. **From Phoenix? I moved to Salt Lake, then I was here for seven years. Then I moved back to Los Angeles for -- I don't know, I guess roughly around -- I'm gonna say 15 years, I guess. And then I moved back up here.**

Q. All right. So when did you move back up here?

A. **I want to say 2002. I've been here -- I'm gauging it by my dog. My dog, he just turned 11 in October, and I moved him up here when he was eight months old, in July. And I moved -- actually moved here in September of that, and then in October he turned one. And he just turned 11 October 19th. So....**

Q. Okay. So about ten years, sounds like?

A. **About.**

Q. Okay. In that ten years, have you always been living at the address 12543 South 150 East?

A. **Yes.**

Q. In Draper?

A. **Yes.**

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Q. You've lived there about ten years?

A. **Un-huh.**

Q. Okay. What's your relationship with your neighbors there? I want to kind of go through them, because there are several neighbors of yours that are witnesses here. So, let's start with Josh, how long have you known Josh Chatwin?

A. **Since a couple days after. I don't really know him, I just met him from that incident that day.**

Q. Okay. So the incident of May, 2010?

A. **Correct.**

Q. Okay. Would you say -- I mean, do you have a close relationship with Josh?

A. **We don't hang out or --**

Q. Okay. So you don't socialize with Josh or anything like that?

A. **No.**

Q. Just neighbors, see him from across the street every once in a while?

A. **Yes.**

Q. Okay. What about Josh's parents?

A. **What about them?**

Q. They're your neighbors, correct? They live across the street?

A. **Un-huh.**

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Q. And what's your relationship with them?
A. **We're neighbors.**
Q. Okay. Don't socialize with them?
A. **No.**
Q. Okay. And so, Josh's grandparents also are

your neighbors, is that correct?

A. **Correct.**

Q. And where do they live?

A. **Next door to Josh.**

Q. Okay. And again, do you have a close relationship with them?

A. **What do you deem 'close'?**

Q. So do you go out with them, socialize with them? You just see them in the neighborhood?

A. **And his grandfather helps me, because I'm single, if I have, like, something breaks at the house or -- he's helped me trim a tree.**

Q. Oh, okay.

A. **Like that.**

Q. All right. And he's done that since you moved in for the last ten years, or?

A. **Yeah. He takes the trash cans in and out, shovels the driveway.**

Q. All right.

A. **He did it for the people that lived there**

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before me. He's just a great guy.

Q. There are also some other neighbors that are involved here, so do you know Steve Merrin?

A. **No.**

Q. He's not your -- you don't know him from across the street, or do you know Heidi Merrin?

A. **Oh, Heidi and Steve. Well, his name is Steven.**

Q. Okay, I'm sorry.

A. **Yeah, I know them.**

Q. Steven Merrin.

A. **Un-huh.**

Q. Okay. What's your relationship with them?

A. **They're just neighbors, I don't socialize with them.**

Q. Okay. There's a Jason Scott that's also submitted a witness statement; do you know him at all?

A. **No.**

Q. Okay. There's also a man by the name of -- and I'm not sure if I'm gonna pronounce this correctly, Mehdi Mahmoudi? Do you know Mehdi?

A. **No.**

Q. Okay. So, let's just go through the events of May 18th, 2010. Do you remember that day?

A. **Is that the day that it happened?**

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Q. Yes.

A. **I would have to look back in the paperwork.**

Q. Okay. So I would like it if you could just go through and tell me, from start to finish, what happened that day for you?

A. **Where do you want me to start, when I got out of bed?**

Q. Sure.

A. **Okay. I got out of bed, I don't remember what I did before that. I got ready to go. I went out -- got ready to go run errands, and I was looking out my window to see if I had any weeds in my flower bed. When I looked across the street, that's when I saw the cop had pulled in behind Josh.**

So I stood there and watched everything that transpired. They gave him a sobriety test, then they handcuffed him and then they threw him to the ground, and then the paramedics came, and all the other supervisors came. And everything that went with that.

Q. Okay. So let's break it down.

A. **Okay.**

Q. I'll ask you as we go. So, what time did you wake up that morning, do you remember? You hadn't just woken up when you saw what was --

A. **No, I probably got up around 9, 9:30.**

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Q. Okay. Had you ingested any substances that day --

A. **No.**

Q. -- that would have affected your ability to observe things, remember things?

A. **No.**

Q. Hadn't drank anything that morning?

A. **No.**

Q. No illicit drugs?

A. **No.**

Q. No prescriptions that would have affected your memory?

A. **No.**

Q. Okay. What about the night before? I know you work kind of crazy hours, right, because you work for Delta. Had you slept that night very well, or had you just gotten in, like, from a flight really late?

A. **I don't remember.**

Q. You don't remember, okay. So you don't remember if you worked the day before?

A. **Oh, yes, I did, I worked. But I probably got in late that night. I can't be specific, I'd have to go back and look at my --**

Q. Okay. And so, had you taken any --

A. **-- schedule.**

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Q. Had you taken anything the night before to sleep --

A. No.

Q. -- or -- about what time, if you recall, did you first notice the cop car across the street?

A. Probably around quarter to 12.

Q. And where were you when you saw it? You said --

A. Standing in front of the window.

REPORTER: Okay, you need to let her finish.

THE WITNESS: I'm sorry, I'm sorry, I'm sorry, I'm so sorry.

REPORTER: I just need a whole question. I got "probably around quarter to 12", and I need your question again.

BY MS. GREGSON:

Q. So, where were you when you first noticed that the cop car was across the street?

A. Standing in front of my front window.

Q. Okay. And does your front window, is that directly across the street from his, where his driveway is? Would you say that they're directly across?

A. Yes.

Q. Okay. So, I want to kind of pin that down. If 12:00 would be, you know, right in front of you. Is

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Josh's driveway 12:00 from where you were standing at your window?

A. Might be 12:10.

Q. 12:10. How many feet would you say -- I know it's hard to estimate distances. 100 feet, 50 feet?

A. I couldn't even tell you. I never measured it. I couldn't tell you how big my front yard is.

Q. All right. Can you tell me how wide his driveway is? Can it fit two cars? Is it -- two cars side by side?

A. Oh, definitely.

Q. Yes, okay. How was your vision that day? Do you wear glasses?

A. I do.

Q. You do. Were you wearing your glasses at the time?

A. Yes, I was.

Q. Okay. So let's go through the sequence of what you saw. Okay. So you first said that you saw a police car across the street. Did you see the police officer?

A. The back of him.

Q. Okay. What was he doing?

A. He got out of his car to go to Josh's door of his car.

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Q. Okay. And what did he do when he got to the door?

A. I don't remember.

Q. Did you see Josh hand him any paperwork?

A. I don't remember.

Q. And so, eventually he got him out of the car; is that correct?

A. Correct.

Q. And they did a field sobriety test?

A. Yes.

Q. What kind of test did you observe?

A. Walking the line. That's what I remember.

Q. Just walking the line. Did he seem to be struggling with the test?

A. Yes.

Q. Did you see the -- I know you probably couldn't hear anything, is that correct?

A. Correct.

Q. From where you were. Did you see any interaction between him and the officer? Could you tell that he was saying things to the officer?

A. During the field sobriety test?

Q. Yes.

A. I couldn't hear anything.

Q. So you didn't see him saying something, like

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his lips weren't moving?

A. I couldn't see that.

Q. Did Mr. Chatwin appear to be intoxicated, from your observation?

A. Yes.

Q. How was his balance when he was walking?

A. Unsteady.

Q. When did you see other officers arrive?

A. We may need to go back a step here.

Q. Okay.

A. So, the officer that originally got there, when he was talking to Josh at that point, that was when the other two officers came. The original officer that came, was not giving the field sobriety test. It was another male police and a female police officer. The original officer stayed with the car and was going through the car.

Q. Okay. So yeah, let's back up.

A. Okay.

Q. So the first officer met Mr. Chatwin at the door of his car, talked to him there for a bit, and then other officers showed up, correct?

A. Correct.

Q. And the two officers, you said there was a male and a female officer?

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A. Correct.

Q. Okay. Were they in the same car when they showed up?

A. No.

Q. So, when they -- they both showed up at the same time?

A. I am not absolutely positive if they showed up exactly the same time.

Q. Okay. And you say that when they were both there, they started giving Mr. Chatwin the field sobriety test?

A. Correct.

Q. The two of them together?

A. Correct.

Q. And then what happened after the field sobriety test?

A. Then they handcuffed him.

Q. Okay. Did they offer him any -- did they offer him a breathalyzer test; do you remember that?

A. Yes.

Q. Okay. And what -- did he refuse it?

A. Yes.

Q. Do you remember which officer put handcuffs on Mr. Chatwin?

A. No.

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A. Close to the back of the truck.

Q. Okay.

A. Of the pickup truck.

Q. Where was the pickup truck parked?

A. In the driveway.

Q. All the way in the driveway, like all the way up the driveway?

A. Not all the way up, just in -- I can't be -- it's been five years, so it was close to the sidewalk, the back end of the truck. Now, whether the back end was still in the sidewalk, I don't remember.

Q. So they bring him to the truck behind the second door of the truck. Which way is he facing when they take him that way?

A. North.

Q. Okay. So is north facing the truck, facing --

A. Facing the truck.

Q. Facing the truck, okay, great. I don't remember the direction around your neighborhood, I'm sorry.

A. That's okay.

Q. So, when they get to the truck, that's when things seem to get interesting, right? That's when the incident happened, correct?

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Q. The male or female?

A. No.

Q. Okay. So after they handcuffed him -- actually, first of all, where were they standing when they handcuffed him, do you recall?

A. To the left of his driveway.

Q. To your left of his driveway, on the sidewalk?

A. Yes.

Q. So they handcuffed him. And what did they do next?

A. From my recollection, they walked him to the back of the pickup truck.

Q. Both of them together, both the female and the male officer walked him to the back of the pickup truck?

A. I don't recall if it was both of them.

Q. Were they directly behind the pickup truck?

A. No.

Q. So where, in relation to the pickup truck, were they?

A. So you have the front door, you have the second door, and then you have the bed of the truck; behind the second door.

Q. All right.

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A. Correct.

Q. So what I'd like to do, is as we're kind of going through this, is have you draw it out, if you can, for me. Would you be willing to do that?

A. From what I remember.

Q. Yeah. Okay. So if you could draw for me the Chatwin's driveway and the positioning of the cars in the driveway at the time?

A. Okay.

Q. That's all the cars?

A. In the driveway, that I remember.

Q. Okay. Were there any cars on the street?

A. Yes.

Q. Maybe we can extend it to show the cars on the street. Okay. Could you do that, please?

A. How far into the car drawing do you want me to go? I'm not asking tires, I'm just saying this is from -- like, this was the second officer, I guess.

Q. Okay. If that's all -- is that all of the officers cars that --

A. At the time?

Q. At the time.

A. Yes.

Q. So let me just -- I'm kind of peering over here. So you've drawn --

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A. I can do this.

Q. Okay. Thank you.

A. So, this is my house. This is my front yard.

This is the sidewalk, and this is grass. This is the street. Then they've got grass, sidewalk, and then their driveway. There's grass here.

Q. Okay.

A. Does that make sense?

Q. Yeah. I think so. And so you've drawn a couple rectangles here. I just want to identify them. So this one up here, in what I assume is Josh's driveway, it has the 'J' on it, what's that?

A. Josh's car.

Q. Okay. And then this box here that says 'F'.

A. The first officer.

Q. Okay. And then there's a longer rectangle there to the right of Josh's car and behind it a little bit, and what's that?

A. The pickup truck.

Q. Okay. So you've written a 'T' in there for truck, right?

A. Correct.

Q. Okay. And then there's a car on the street --

A. That's the second officer.

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Q. Directly behind him, just standing?

A. Standing behind him.

Q. Facing his back?

A. Correct.

Q. Okay. And Josh is in handcuffs, correct?

A. Correct.

Q. Can you see his hands when the officer is standing behind him?

A. Yes.

Q. You can?

A. Yes.

Q. Okay. How tall, in relationship to Josh, would you say that officer is?

A. I don't remember.

Q. Not taller than Josh, shorter than Josh, you don't remember?

A. No.

Q. But you could see Josh's hands, even though the officer was standing directly behind him?

A. Correct.

Q. Okay. Could you see the officer's belt?

A. Yes.

Q. The back of his belt? I'm trying to understand the angle at which you saw this, okay? So could you see the officer's back, his side?

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Q. Okay, the 2-O for second officer. Okay. So that helps. Could you also mark on your house, where is the window that you were looking out of?

A. So, this is my front door, and this is the front window.

Q. Okay. Could you mark that with a 'W' so we can know for sure. Thank you. We'll probably use this more, so I'll hand it back to you.

A. I'm sorry.

Q. So, Josh is up against the truck. He's facing towards the truck behind the second window, correct?

A. Behind the second door.

Q. Second door, I'm sorry, the second door of the truck, right?

A. Right.

Q. Which officers are -- where are the officers at this point, all three of them? Can you tell me?

A. The first officer is still in the car.

Q. He's in the car?

A. In Josh's car, he's been going through the car.

Q. Okay.

A. The female officer is walking between, and the male officer is behind Josh.

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A. So, on the picture, this is Josh facing the truck. This is the officer facing behind Josh. Here's my window, so I see sideways. So I would see everything on the side of everything.

Q. Okay. So you saw just from the side, you could see both of them?

A. Correct.

Q. You could see space in between their bodies?

A. Correct.

Q. Okay. And how much space would you say was in between the officer and Josh at the time?

A. I don't remember.

Q. You don't remember? It could have been --

A. Five years ago.

Q. -- five feet, a foot?

A. I mean he's standing behind him, so he wasn't right -- right touching his -- his body wasn't touching his. He was behind him, not --

Q. Okay.

A. If I was to give you a specific, I would just be guessing.

Q. That's okay, we don't want you to guess. But if you could estimate, that would be great, but you don't have any recollection?

A. I could estimate -- I'm sorry. I can

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estimate, like, if he was standing here, he was standing behind him.

Q. So you are standing up and you're indicating from the end of the table to --

A. **This is Josh --**

Q. --you?

A. **-- this is the officer. What do you want to say that is, three feet? Doesn't seem like three feet. Two feet?**

Q. I'm not answering questions, so I can't say, but would you say that's arm's length?

A. **Probably.**

Q. What's Josh doing when he's up facing the truck?

A. **Nothing.**

Q. Just standing there?

A. **Un-huh, yes.**

Q. So he's not moving at all?

A. **No.**

Q. And what happens after he is taken to the side of the truck? What happens then?

A. **The first officer starts taking stuff out of the back of the truck, and putting it in the back of the truck.**

Q. So the first officer that was in Josh's car,

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came over and starting getting things out of the truck?

A. **Yes.**

Q. And what's the female officer doing?

A. **I don't remember.**

Q. The male officer that's behind Mr. Chatwin, what's he doing?

A. **Just standing behind him.**

Q. Just standing behind him. Do you see him searching Josh, or touching him? No?

A. **No.**

Q. Just standing right behind him. And at some point you say that this officer threw him to the ground. That's what you said. What happens right up until that point?

A. **Josh was handcuffed, looking to his right. And from what I can see, it looks like he says something, and then the officer grabbed him and threw him to the ground.**

Q. So he turns his head?

A. **Yes, head's turned.**

Q. And you see his lips moving?

A. **Yes.**

Q. Because you said earlier that you couldn't hear anything, right?

A. **Correct.**

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Q. So you think he was saying something just by the fact that his lips were moving?

A. **Correct.**

Q. Okay. And so the officer just immediately -- what does he do right after Josh turns his head and says that?

A. **He throws him to the ground.**

Q. How does he do that?

A. **Just grabs his arm and whips him down.**

Q. Okay. So he grabs his arm. Do you recall which arm he grabbed?

A. **I believe it was his left arm.**

Q. Okay. So his left arm. And he takes it and just -- I want to know the sequence here. You say he whips him around, what does that mean?

A. **Well, he grabs him, and he throws him to the ground.**

Q. Okay. So, which side of the officer does he move Josh -- Mr. Chatwin towards? Is the officer moving Mr. Chatwin towards your house, or towards Mr. Chatwin's house?

A. **Counter-clockwise.**

Q. Counter-clockwise. So towards Mr. Chatwin's house?

A. **Correct.**

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Q. And then where does Mr. Chatwin end out going to the ground?

A. **In the gutter.**

Q. In the gutter of his driveway?

A. **Correct.**

Q. Okay. So, he makes like a 180, and ends out behind where he was standing before?

A. **Correct.**

Q. Okay. Can you mark on this drawing that we did, where he ends out on the ground, please?

A. **Approximately.**

Q. Okay. So you've marked kind of on the edge of the street here right behind the truck?

A. **Yeah. Yeah.**

Q. Okay. So, you've moved it a little bit, so that it's to the left of the truck. Okay. When you saw Josh's lips moving, could you tell what he said?

A. **No.**

Q. Was he saying -- was it a long conversation, a long statement that he made, or something short?

A. **I don't know.**

Q. Did you see his lips moving for a long period of time?

A. **No.**

Q. So, it was a short statement you would say?

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A. I would say.

Q. And the officer, when Josh turns his head and starts saying whatever it is he said, what was the officer doing, just standing there?

A. Behind him?

Q. Yes.

A. Yes.

Q. When you say he threw him to the ground, the officer threw Mr. Chatwin to the ground, would you say the officer literally picked him up and tossed him, or Mr. Chatwin stumbled to the ground after he was turned? I want to know what you mean by 'threw him to the ground'?

A. Well, he's handcuffed, so he didn't, like, pick him up and toss him. He grabs him, and he just throws him down.

Q. He grabs his left arm, correct?

A. Correct.

Q. Turns him counter-clockwise, and pushes him down?

A. No, he throws him down.

Q. So I don't understand what you mean by 'throws'?

A. Would it be easier if I showed you?

Q. Well, I know we have a video here, but we

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also need to try to make a record. So if you can describe it to me, that would be great.

A. He stands behind him, he grabs him by the arm, and he throws him to the ground.

Q. So he did push him to the ground?

MS. MARCY: Objection, mischaracterizes the testimony.

BY MS. GREGSON:

Q. You can answer the question.

A. Can you repeat it again?

Q. So he did push him to the ground?

A. What do you consider pushing?

Q. Did the officer use some sort of momentum or force to push him to the ground?

A. Push or throw, is there a difference?

Q. Do you think there's a difference?

A. Yeah. If I push somebody or if I throw somebody, that I think is a difference.

Q. Did you see Josh's feet leave the ground?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Was Mr. Chatwin stumbling when the officer moves him quickly?

A. I don't remember.

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Q. How did Mr. Chatwin fall? Did he fall face first? On his back? On his side?

A. On his head.

Q. On his head. So the first part of his body to hit the ground was his head?

A. Pretty much.

Q. You didn't notice whether his knees hit or -- no? I need an audible response, sorry?

A. I wanted you to finish your question.

Q. Go ahead.

A. I'm trying to help her. I don't remember.

Q. Do you think -- strike that. Sorry. Where was the female officer standing when Mr. Chatwin went to the ground?

A. Between the two cars, between the officer's car and where Josh was.

Q. Okay.

A. So right between the two.

Q. Okay. And the first officer that you said he had gone and started getting things out of the truck, where was he located when Josh went to the ground?

A. He was back in the car.

Q. So he had gone back to Josh -- Mr. Chatwin's car, and was searching through it again?

A. Correct.

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Q. What happened after that?

A. After Josh was thrown to the ground and his head hit the ground, the female officer threw her arms up in the air like (gesturing)--

Q. Who was she --

A. She did it towards --

Q. Who was she gesturing towards when you made that gesture?

A. I can't be sure. I can't remember.

Q. Okay.

A. I can't.

Q. You made a gesture like she -- sorry, that you threw up your arms like this, okay?

A. So she threw up her arms like this, like 'what just happened?' I don't remember if she turned around and went back to the first officer, or -- I know she ended up down there with him, too, on the ground with Josh.

Q. Let's break down that sequence.

A. Okay.

Q. So you see her throw her arms up, right after Mr. Chatwin goes to the ground. What does she do after that?

A. I don't remember.

Q. What does the officer, that you say threw him

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to the ground, do after that?

A. He's down on the ground with Josh.

Q. What's he doing?

A. At one point he was patting his shoulders.

He did that a couple of times.

Q. How long was he on the ground with Josh?

A. I don't remember.

Q. Did you notice whether the female officer saw what happened when Josh fell down -- Mr. Chatwin fell down, excuse me?

A. Did she witness it?

Q. Was she watching when it happened?

A. I don't remember.

Q. Did any of the other officers come and check on Mr. Chatwin? You said, the -- I think you mentioned earlier the female officer checked on him at one point?

A. I believe so.

Q. You don't recall when that was?

A. No.

Q. What did she do when you say she checked on him?

A. She knelt down with him.

Q. I know, we have to be patient, I'm sorry. So let me finish my question. How long would you say that Mr. Chatwin was on the ground?

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you went out your garage and walked over?

A. Not immediately.

Q. How long would you say you waited before you left?

A. Maybe three minutes.

Q. And then you left and stopped watching?

A. Correct.

Q. Okay. You went to the Merrins' house, correct? What did you do then?

A. I got Heidi.

Q. Okay. Heidi Merrin?

A. Correct.

Q. And you got a phone number from her, correct?

A. No, we went to the next door neighbor's house.

Q. Okay, so Heidi's next door neighbor?

A. Correct.

Q. And then you got a phone number from that person?

A. Correct.

Q. What was that person's name, do you recall?

A. Which person?

Q. The person -- Heidi's next door neighbor?

A. It was a little girl was home, Elizabeth.

Q. And what did you say to Elizabeth?

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A. Until when?

Q. Until he wasn't on the ground anymore?

A. Oh, I don't know.

Q. What did you do after you saw him fall?

A. I went across the street to Heidi and

Steven's house to get the phone numbers for the grandparents so they could go over, and check and see what was going on.

Q. So you went to Heidi and Steven Merrin's, correct?

A. Correct.

Q. And where is their house located in relation to yours?

A. Across the street.

Q. So did you go out your front door?

A. My garage.

Q. You went out your garage, and walked across the street, and went to your neighbor's house, correct?

A. Correct.

Q. And during this time, you were also watching and seeing the officers checking on Mr. Chatwin after he had gone to the ground?

A. When I walked across the street, I was no longer watching.

Q. So, right after he went down to the ground,

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A. I didn't say anything to her. Heidi got the paper from her.

Q. Okay. Do you recall what Heidi said to Elizabeth?

A. No.

Q. So you got the paper, it had the phone number, you called. Did you make the phone call?

A. No.

Q. Who made the phone call?

A. Heidi.

Q. Heidi. And do you recall, did you hear what Heidi was saying on the phone?

A. I don't remember.

Q. Who was it that she was calling? You may have already said this, I'm sorry?

A. The grandparents.

Q. The grandparents of Mr. Chatwin?

A. Correct.

Q. Did she reach them when she called, do you recall?

A. Yes.

Q. And what happened after you called, after Heidi called the grandparents?

A. The grandparents came out.

Q. They came out of their house?

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A. Correct.

Q. Because they live on the other side of Mr. Chatwin's house, correct?

A. Correct.

Q. Okay. And what did you do when they came out of their house? Were you still at Heidi's neighbor's house?

A. No.

Q. Where did you go after that?

A. With Heidi.

Q. With Heidi where?

A. I guess back to her house. I don't remember that.

Q. So, you went back inside her house?

A. I don't think so.

Q. Were you outside?

A. I think so.

Q. In the front yard?

A. I think I only went in her house once to get her.

Q. So you were standing in the front yard. Were you still observing the scene?

A. I don't remember.

Q. And when Mr. Chatwin's grandparents came out, did you go over and talk to them?

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Q. Did you speak to any of your other neighbors about the incident, about writing a witness statement?

A. I don't remember.

Q. So you don't remember talking to Steven Merrin?

A. No, I didn't.

Q. Or same thing with Jason Scott, you don't remember talking to him about putting down a witness statement?

A. Who's Jason Scott?

Q. I'm sorry, Jason Scott is a witness in this case.

A. Okay.

Q. You don't remember talking to him? That's okay if you don't.

A. No.

Q. Our friend Mehdi Mahmoudi, do you remember speaking with him at all?

A. No.

Q. Okay. You know, I think we've been going about an hour, this might be a good time to take a break. Is that okay?

A. Sure.

(Whereupon a recess was taken.)

BY MS. GREGSON:

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A. I don't remember.

Q. Did you go back to your house?

A. I don't remember.

Q. So after that point, do you recall anything that happened?

A. I remember the sheriff came and I went and talked to him. I'm sorry, the sergeant, their sergeant.

Q. What did you say to the sergeant?

A. I just told him I witnessed what happened.

Q. And when did he arrive? How much later after this occurred did he arrive?

A. Maybe ten minutes, 15 minutes, I guess.

Q. What did he say when you told him you witnessed it?

A. He asked me to write a report.

Q. And did you write a report?

A. Yes.

Q. Okay. After you wrote your report, did you stay on the scene?

A. I don't remember.

Q. Did you talk to Heidi about writing a report?

A. I don't remember.

Q. Did you tell her -- you don't remember telling her to write a witness statement?

A. I do not remember that.

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Q. Okay. So now that we're back on the record, I want to just mark this drawing that you did as Exhibit 1.

(Exhibit No. 1 was marked for identification.)

BY MS. GREGSON:

Q. We might refer back to that later. Ms. Torrence, have you seen someone arrested before?

A. God, I don't remember.

Q. Not sure?

A. Maybe on the airplane.

Q. Have you ever seen someone in handcuffs before?

A. Yes.

Q. When?

A. Coming onto the airplane.

Q. So, can you go in to some more detail for me there?

A. When prisoners are moved, they're handcuffed. Sometimes their feet, sometimes just their hands.

Q. So you're talking about when prisoners are moved on an airplane?

A. Correct.

Q. I have some photos here. I'd like to mark this packet as Exhibit 2.

(Exhibit No. 2 was marked for identification.)

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BY MS. GREGSON:

Q. Do you have Exhibit 2 in front of you?

A. I do.

Q. And this is a series of pictures. Can we go just from the first page, you have to turn it to the side here. Let's talk about these pictures. Do you recall these pictures being taken?

A. I do, they were taken by the sergeant.

Q. When were they taken?

A. The day of May 18th.

Q. So the same day of the events that we just --

A. Correct.

Q. -- went through? Okay. Where were -- let's see. On the first page, these two photos on the top of the page, where were those taken from? Sorry, the first page is the one with the sticker on it.

A. So, which picture?

Q. So when you turn your page so it's upright, there are two pictures on the top here. The two pictures that are horizontal, where were those two taken?

A. The picture at the top was taken from my front yard, I guess.

Q. You guess?

A. It's my front yard. I don't know if it was in the grass or in the house.

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Q. Is that the positioning of the cars when these events took place, that you recall?

A. I don't understand.

Q. So, were these cars in the same place as they are in this photo?

A. I don't remember.

Q. You don't remember if they had been moved and --

A. No.

Q. Okay. Do you recall how soon after this occurred that the sergeant came to your house and took these photos?

A. No.

Q. It was the same day though?

A. Yes.

Q. So you're not sure if it was that evening?

A. By the looks of the picture, it's daylight out, so it must have been around two, I'm guessing. It wasn't like he left and came back that evening; he came over after everything was cleared up.

Q. Okay. So will you agree with me that from this view on your -- from your window, the Chatwin's driveway is not directly across the street from your window, correct?

A. Correct.

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Q. Okay. Where was the picture below that taken?

A. Be across the street.

Q. Okay. And then the picture next to it, I see it has a window pane, where was that taken?

A. In my living room.

Q. And I see kind of a figure there, is that you standing there?

A. Yes.

Q. And is that where you were standing when you witnessed the events that day?

A. Yes.

Q. Okay. Then let's turn the page to the second page. There are two more pictures there of your window, just a little bit closer. Are you still standing in that same spot there?

A. Yes.

Q. Okay. And in these two pictures the truck door is open. Were any of the doors open on the truck when Mr. Chatwin went to the ground?

A. I don't remember.

Q. And let's back up to the first page again. That first picture, you said either was from your window or your front lawn?

A. Correct.

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Q. It's to the right?

A. To the right.

Q. A little bit, right? And when I asked you whether it was 12:00, 1:00, 2:00 you said it was 12:10?

A. Correct, that would make it more to the right.

Q. Right. So you still think it's 12:10 looking at these photos?

A. Yeah.

Q. And so you say that the officer, second officer took Mr. Chatwin to the truck and faced him towards the truck. Is this the truck that he faced him towards, in the middle of that picture there?

A. It looks like it, but I can't be for sure.

Q. And so he placed him behind the second car door on that truck?

A. Correct.

Q. Would you agree with me that that would put them in the sidewalk, or maybe even past the sidewalk?

A. It's in the driveway.

Q. In the driveway going into the street though, the portion of the driveway between the sidewalk and the street, correct?

A. This truck is, yes.

Q. That's where he would be standing if he was

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standing behind the second door on that truck, correct?

A. Correct, it was this truck.

Q. And where did -- and you said that Mr.

Chatwin ended out on the ground right to the right of that truck, or to the left of that truck, correct?

A. He ended up in the gutter.

Q. Was his entire body in the gutter?

A. No.

Q. Where were his feet?

A. I don't remember.

Q. Where was his head?

A. In the gutter.

Q. Okay. So, you don't remember if his feet were in the street or in the driveway?

A. They weren't in the street.

Q. So again, looking at this picture, if Mr.

Chatwin was standing behind the second door on that truck, and the officer turned him around like you said, and he ended out with his head in the gutter there, he didn't get thrown very far, did he?

A. No.

Q. So the officer didn't toss him several feet into the street, correct?

A. No.

Q. Because looking at this photo, where he

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landed isn't very far from where he was standing to begin with, correct?

A. Correct.

MS. MARCY: Objection, form.

MR. HAMILTON: So, it wouldn't have taken very much force for him to end out in that location from where he was before, correct?

MS. MARCY: Objection, form.

THE WITNESS: Can you ask it again?

BY MS. GREGSON:

Q. So, would it have taken very much force to move Mr. Chatwin from the place he was standing behind the second door on the truck, to where he landed, which you already testified wasn't very far from where he was standing to begin with, correct?

MS. MARCY: Objection, calls for an opinion outside that of a lay person.

THE WITNESS: What you are asking me is if -- you are asking me two different questions. If you were standing behind the truck and I grabbed you, and I put you down on the ground, no, it wouldn't take very much force. But the force the officer used to get him to that point, was excessive.

(Exhibit No. 3 was marked for identification.)

BY MS. GREGSON:

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Q. Okay. Do you have Exhibit 3 in front of you?

A. I do.

Q. Okay. And I'd like you to actually turn to the last page of that exhibit. Is that the statement that you filled out the day of May 18th --

A. It is.

Q. -- 2010. And these other pages, when did you write those?

A. I don't remember.

Q. This is your handwriting, correct?

A. Yes.

Q. This is something you wrote?

A. I don't remember if I wrote it that night or the next day. I'm guessing. It could have been that night.

Q. Do you remember why you wrote it?

A. So I had a recollection of what happened.

Q. So you didn't -- why didn't you write the things here in the first statement that you wrote that day?

A. I just wanted to hurry and give it to him, give him a brief idea of what happened. And he may have a copy of this; I'm not sure.

Q. Who is 'he'?

A. The sergeant.

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Q. Okay. So let's talk about the first statement that you wrote that day that you handed to the sergeant.

A. This one?

Q. Yes. Did you hand it to him on the scene, or did you come into the police station?

A. He came into my house and I gave it to him.

Q. And so when he was taking those pictures that we looked at?

A. Correct.

Q. I want to talk -- let's see. Let's read this whole -- I'm trying to figure out the best way to get to this line, and I think it's just better if we read it.

A. Okay.

Q. Okay. So, it says, 'At approx' which I assume is short for approximately, '12:00 p.m. I witnessed' -- I assume that's an error.

A. Witnessed.

Q. 'Witnessed the neighbor being pulled over in his driveway. The officer approached the vehicle. The driver handed the officer papers of some sort.' Did I read that correctly?

A. Yes.

Q. 'Two more officers arrived on the scene, one male, one female officer. They proceeded to administer a

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sobriety test.' Did I read that correctly?

A. Yes.

Q. 'They handcuffed the gentleman, and walked him to the officer's truck. He was handcuffed facing the car (truck), when the second officer on the scene grabbed the boy by the handcuffs, whipped him around so hard that when he hit the pavement, his head bounced up.' Did I read that correctly?

A. Yes, you did.

Q. Okay. I want to stop there for just a second. You say here that 'the officer grabbed the boy', I assume 'the boy' is Mr. Chatwin?

A. Yes.

Q. It says that 'he grabbed Mr. Chatwin by the handcuffs'?

A. Okay.

Q. You testified earlier that you said he grabbed him by his left arm?

A. Okay.

Q. Which one is correct?

A. I'm gonna say whatever I wrote in this.

Q. Why?

A. Because we're talking five years ago.

Q. 'And he whipped him around so hard that when he hit the pavement, his head bounced up.'

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And then I wrote it out exactly as I could see that from take off to touch down, if you will, of what happened from what I recalled at that time.

Q. So you said that you were -- that you saw Mr. Chatwin turn and say something. So it's fair to say that you were looking at Mr. Chatwin's face when that happened?

A. I was looking at the whole area.

Q. You were focused in on his face?

A. I could look at your face and see your pants.

Q. But you're focused on his face, correct?

You're watching his --

A. I can't be for sure.

Q. And here again, you say that 'he grabbed him by his handcuffs'?

A. Okay. Maybe I wrote handcuffs and meant arm.

Again, adrenaline was rushing during that time.

Q. Where were the handcuffs placed on him?

A. His wrists.

Q. Where were his hands located?

A. Behind his back.

Q. Upper back, lower back?

A. I guess they would be his lower back. I guess if they were in his upper back, he'd have short arms, right?

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You don't say that he threw him to the ground here; why not?

A. I guess that's not my terminology.

Q. But a day or two later when you wrote this other statement -- let's look at this one now. You've written kind of sideways in the margin here, 'the man looked my way over his shoulder when he said something to the office' -- officer I'm assuming -- 'right before the cop threw him to the ground.'

A. So when I wrote the first one, when you see something like that, it gets your adrenaline going. It's amazing that -- you're just like 'oh my God'. So, whatever I wrote on this one, my adrenaline is rushing. When I sat down and I calmed down and I'm trying to write it out specifically, perhaps that's when I wrote 'threw him' instead of 'whipped him', it's just my terminology. It means the same thing to me.

Q. Okay. And so here in the second statement -- let's keep looking at that now. This is where you mention that you saw Mr. Chatwin turn and say something to the officer. You didn't mention that in the first statement, correct?

A. No, because this was just a brief -- a quickly written -- like I said, it's just been quickly written, so I could give it to the officer before I left.

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Q. Maybe like if his arms were -- his elbows were bent. No?

A. That would be a contortionist.

Q. So, you also wrote in here, that the woman officer, you wrote, that she was Latin?

MS. MARCY: Excuse me, where are you pointing to?

MR. GREGSON: I'm sorry, I'm on Chatwin 270.

THE WITNESS: I guess she appeared that way.

Q. 'One woman officer Latin, one male officer white.' She appeared Latin to you?

A. She appeared dark-haired, darker person, and a white male.

Q. Let's turn to -- on the bottom of these pages there's a little marking that says Chatwin, and then some numbers. Let's turn to Chatwin 272. Are you there?

A. I'm there.

Q. Great. You wrote in here that 'the second officer's truck was number 627'?

A. Yeah.

Q. How did you know that?

A. I have no idea.

Q. You just have a really good memory of numbers?

A. I guess so.

Q. You wrote this and you said maybe the day

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after the event?

A. Could have been the day of. I don't remember what that was.

Q. So, while I was reading these, you noticed that there were some spelling errors and some errors in your writing?

A. It's not typed out, obviously.

Q. Obviously. Would you say that you were excited when you wrote these statements?

A. The first one?

Q. Either of them.

A. The first one I wrote definitely, because I'm trying to write it out from what I remember right at that time. I don't remember when I wrote the second one, but I know it wasn't like a week later. It wasn't a month later. It was shortly after, just to make sure I had something to go back on, to -- you know, you're gonna forget stuff.

Q. All right. You said earlier that you read over your testimony from the preliminary hearing at Mr. Chatwin's criminal proceeding, correct?

A. Last night? Correct.

Q. Okay. Do you recall that you testified during that hearing that the officer grabbed Mr. Chatwin's arm and threw him to the ground?

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A. I do not recall.

Q. You've got to let me finish my question.

Sorry. Would you say that your testimony at the hearing, because the adrenaline wasn't pumping through your veins, is more accurate than your statements that you wrote down that day?

A. I don't know.

Q. Why not?

A. I don't remember.

Q. So you don't remember when you were being accurate and when you were --

MS. MARCY: Objection, mischaracterizes the testimony, argumentative.

THE WITNESS: The facts I wrote down here to the best of my knowledge, are what I saw. And what I said in the testimony, to the best of my knowledge, is what I remembered.

BY MS. GREGSON:

Q. Did you see the officer's face when you say that he threw Mr. Chatwin to the ground?

A. No.

Q. Could you see the officer's face at all during --

A. I could see the side of it.

Q. So, could you tell anything from looking at

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A. I don't remember.

Q. Do you remember the date of that hearing?

A. No.

Q. If I said it was in February of 2011, does that sound about right to you?

A. I couldn't be for sure. The court date got changed so many times, and I don't remember the exact date it was.

Q. But it was in 2011?

A. I don't remember.

Q. Why would you have said that the officer grabbed his arm at the hearing?

A. I would guess because that's what happened.

Q. But in your statement the day of, the day after, you said that officer grabbed his handcuffs?

A. So, that would be when the adrenaline was rushing.

Q. So that's why you just mixed up that fact?

A. Not so much mixed it up, but just said you're grabbing that part of a person's hand. He didn't grab his neck and throw him down. He grabbed his arm, his handcuffs, he grabbed that area, and whipped him around and threw him to the ground.

Q. Do you recall if he grabbed that area with both of his hands --

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the side of his face about his emotions at the time?

A. No.

Q. All right. In your testimony during the preliminary hearing, you were asked some questions about whether you saw Mr. Chatwin doing certain things when he was facing the truck. And you testified that you were absolutely positive, and you guaranteed that Mr. Chatwin did not undo the gun clip on the officer's belt. Do you recall that testimony?

A. Absolutely.

Q. That's quite a statement to say that you guarantee it. Did you know that Mr. Chatwin testified yesterday?

A. I heard.

Q. Did you know that he testified that he was getting upset with the officers when he was being arrested?

MS. MARCY: Objection, mischaracterizes the testimony.

MS. GREGSON: Did you know that he testified that he may have been getting a little aggressive with the officers?

MS. MARCY: Objection, mischaracterizes the testimony.

THE WITNESS: I don't know what he testified to

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yesterday.

MS. GREGSON: Do you think it's possible that while you were watching Mr. Chatwin's face while he was talking, you say you saw him talking, that he could have been doing something with his hands that you didn't notice?

A. No.

Q. Not possible?

A. Not possible.

Q. Still think that you can just absolutely guarantee?

A. Absolutely.

Q. You said the same thing about whether Josh tried to head butt the officer.

A. That did not happen.

Q. How do you know?

A. Excuse me? How do I know?

Q. How are you absolutely positive that it --

A. Because I was standing there watching.

Q. You said you saw him turn his head, correct?

A. Correct.

Q. So, was he leaning back when he turned his head?

A. No, he was leaning forward on the truck.

Q. Did his head move backwards when he turned

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balance and fallen? Are you absolutely positive, guarantee that?

A. I never said that.

Q. You said he threw him to the ground?

A. Yes.

Q. So --

A. I never said he didn't lose his balance.

We're talking about when he was facing the truck. When he's facing the truck, and you asked me if he tried to undo the officer's holster, absolutely not. If you're asking me if he jerked back, absolutely not. When he grabbed him by the arm and threw him to the ground, a person goes flying.

Q. So I'm asking you, are you absolutely certain that if the officer just grabbed his arm and moved him quickly, Mr. Chatwin couldn't have lost his balance and just fallen down?

A. No.

Q. No, you're not absolutely certain? I'm sorry?

A. No, he didn't fall down, he was thrown down.

Q. So you're positive about that, too?

A. That he was thrown down?

Q. Yes.

A. I'm positive he was thrown down, I saw the

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it?

A. No, it just turned.

Q. So still absolutely positive, there is no possibility his head might have moved backwards?

A. None whatsoever.

Q. All right. Do you recall earlier I was asking you about the field sobriety test?

A. Yes.

Q. And you testified that Mr. Chatwin -- I'm paraphrasing, because I don't recall exactly what your words were -- but that he was having a hard time doing the field sobriety test?

A. Yes.

Q. That he was having a hard time with his balance?

A. Yes.

Q. No possibility whatsoever that he could have lost his balance when the officer was moving him, and fallen?

A. When he was moving him?

Q. When the officer moved him around, like you said he did, he grabbed his handcuffs or his arm or that area, right?

A. To throw him to the ground?

Q. No possibility that he could have lost his

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officer throw him to the ground.

Q. All right. I'm -- let's take one more quick break, I'm getting to the end here.

(Whereupon a recess was taken.)

BY MS. GREGSON:

Q. Okay. So Ms. Torrence, I just have a few more things I want to talk to you about.

A. Okay.

Q. You mentioned earlier you've lived in California and Arizona and then Utah, I believe; is that correct?

A. Correct, correct.

Q. Okay. In the various places that you've lived, have you had any interaction with police officers?

A. No.

Q. Never?

A. I don't think so.

Q. Never called the police for help when you were living in California?

A. Not that I remember.

Q. Did you ever have any interaction with police in Phoenix?

A. No.

Q. So what about in Utah, you said you've been living in Draper the whole time you've lived here,

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correct?

A. Yes.

Q. Have you ever called the police for help

or --

A. Yes.

Q. Okay. So tell me about those interactions

you've had with the police here?

A. It was fine.

Q. Can you give me specific instances of what

happened?

A. I had a roommate that lived with me. I didn't call the cops on him though, they came and they came into my backyard and they weren't -- I didn't invite them in my back yard, they just showed up at my back window. And they wanted the -- they wanted my roommate. And so they asked if they could come in, and I said 'yeah'. So they came in, and they went downstairs and arrested him. He had a ticket for -- a warrant for his arrest for riding on Trax without a ticket. But he had a whole different mess going on, and the police told me 'I'd get him out of your house.' I'm like, 'all right.'

Q. And do you recall when this was?

A. Years ago.

Q. Was it before or after the incident with Mr.

Chatwin?

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remember?

A. That I remember.

Q. You don't remember calling for -- because

both of those times, it sounds like someone else called the police, is that what you recall?

A. Yes.

Q. So you don't remember calling for police help at all?

A. If I do, I don't remember.

Q. Okay.

(Exhibit No. 4 was marked for identification.)

MS. GREGSON: Do you have Exhibit 4 in front of you?

A. Yes. I forgot about this one.

Q. Let's talk about this one.

A. Okay.

Q. So the date here on, when you look at -- there's -- on kind of the top left-hand portion of this police report, it says 'reported' and then a date, and it says 'April 8, 2011', do you see that?

A. Yes.

Q. Okay. So do you recall in April of 2011 calling Draper City police?

A. Yes.

Q. Okay. Can you explain to me why you called

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A. Oh, I don't remember. It might have been -- I don't remember, I don't remember how long ago he lived with me.

Q. Do you --

A. Just glad he's gone.

Q. Do you recall any other interaction with police officers here in Draper City?

A. The police called -- the neighbors behind me called the police because Max was barking.

Q. Who's Max?

A. My dog, sorry.

Q. I assume when you said barking that it was a dog?

A. I guess, yeah.

Q. How would you describe that interaction with the police?

A. It was fine. He came to the door, I came outside, I talked to him. I asked him if Max could come out so he could meet him. And so Max came out and he just said, you know, maybe you could think about taking his barker out. I'm a single woman, I'm not gonna take my dog's barker out. So, I'm like, 'that's not gonna happen.' So, I mean everything was fine. I've never had any issues at all with police, period.

Q. Okay. Just those two instances that you

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them?

A. Because Ashley came over, and he threatened me, but I never talked -- I just talked to the officer on the phone, and I just wanted him to tell Ashley to stay away from me. That's all I wanted, I didn't want anything else. I just wanted him to know that 'you're not gonna come over and harass me, and just stay away from me.' And the officer said, usually this escalates the situation, if we talk to them.

And so, I don't know if he did call him. He never called me back to say 'yes, I talked to him', but that was what was going on here.

Q. So is Ashley an acquaintance of you?

A. Ashley is -- what's an acquaintance? Like are you an acquaintance?

Q. Was Ashley someone that you knew when he came to your house and threatened you?

A. Yes.

Q. Had you known him for a long time?

A. Yes.

Q. Were you friends with Ashley?

A. At one point, yes.

Q. You say that he threatened you. What do you recall? Do you recall what he said?

A. No, it was something to the effect that 'I

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better not find out that you're talking about me', or -- and whatever his threat was.

Q. Okay. So let's look here at the bottom of this police report. There's the second to last paragraph, it says 'Ashley and Kathy had several friends in common. Kathy has heard from several friends that Ashley is bad mouthing Kathy to friends about how she is a horrible person.' Did I read that correctly?

A. This is kind of written -- 'but Kathy has heard from several friends that Ashley is bad mouthing Kathy.'

Q. Did I -- I just want to make sure I read --

A. That's how it's written, but that's not what happened.

Q. Okay. So you called the police. Did they come to your house for this?

A. No.

Q. It was just a phone conversation?

A. Correct.

Q. And did they try to contact Ashley for you?

A. That's what I just told you, I have no idea.

Q. You have no idea. Didn't hear anything back from the police after this, about this incident?

A. No.

Q. Okay.

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A. But his wife Trina, when I ran into her in the lounge in Salt Lake and she goes, 'Hey Kathy', I was like 'okay, so maybe he did.' I don't know. We're not friends anymore.

Q. Fair enough.

A. This was all over dogs. This whole thing happened over the fact that I wouldn't take care of their dog.

Q. Do you want to explain more?

A. Yeah. He had -- well, Ashley got in trouble with the law and wanted me to take care of their pit bulls, because he couldn't have anything around him deemed dangerous. And he is now married to Trina, Trina Leon, but at that time they weren't married. So they couldn't have the two pit bulls in the house, so he wanted them to come to me.

So he ask me if I would take care of them, and when they came over to the house I said 'yes', but as soon as he left, I called them and said, 'I want to revisit this conversation. I don't want five dogs at my house.' So, Ashley never took no for an answer. Ashley had -- because he had his trailer put in my garage, he had access to get in and out of my house. You know, the garage code. So one day I was laying upstairs in bed around 11:00, and I was talking to my friend on the

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phone, and they came into my house and wanted me to come down. And they were yelling, 'we're here, aren't you gonna come down?' I didn't even know they were in my house, because I was upstairs in bed.

So he asked me if I would take the dogs for six months, and his mom would take the dogs for the other six months. I mean, I don't know how many times I have to say no. So he said -- I said 'fine, I'll take them for six months.' He goes, 'you want them the first six months or the last six months?' I said, 'I'll take them the last six months.'

So then a couple days later called him up and I said 'I'm not taking your dogs at all. No means no, you know. If I don't want to take your dogs, why should I have to take your two pit bulls at my house', and I have my other girlfriend's, their two dogs. 'Five dogs at my house? I don't want five dogs, and two pit bulls at my house.' So that's what started the whole entire fight.

Q. So it sounds like the fight was amongst you and friends, right, Ashley and his --

A. Trina.

Q. Trina is Ashley's wife?

A. Now, yes. At the time they weren't married.

Q. Okay.

A. So that's how -- I mean, it went on and on

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and on, but that's how the whole thing started as a fight.

Q. And here in this police report on -- towards the bottom, the second to the last line, it says that 'Kathy said that this is high school drama.' Would you say that's a correct characterization of what you said?

A. Yeah, exactly.

Q. Okay. So why did you feel like you needed to call the police about it?

A. Because he threatened me. And I -- we went camping one time and Ashley said something to me to the effect that 'you don't know who I am, Kathy, you don't know about my past.' So when he came over and said that to me, and made a threat to me, I have to take his word on 'no, I don't know you, I don't know anything about you. I know you're dating my girlfriend, but other than that, I don't know what your background is.' So just to make sure, because Ashley is the way he is, and threatens people, I want him to know that I just want him to stay away from me. That's all.

Q. Okay. Do you recall any other instances where you called police, the Draper City police for help?

A. No.

Q. Okay.

A. Unless you bring to it my attention. I

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totally forgot about this one.

(Exhibit No. 5 was marked for identification.)

THE WITNESS: Oh, is this about the bird?

BY MS. GREGSON:

Q. Well, you've just been handed what's marked as Exhibit 5. Do you have Exhibit 5 in front of you?

A. Oh, that was that roommate. I didn't realize I called the police on that.

Q. So let's talk about this one, too. Hopefully this will refresh your recollection a little bit. So, the report date here on the top left-hand corner is August 20th, 2011?

A. Un-huh.

Q. Okay. And so, on that date, did you call the Draper City police for help?

A. Yes.

Q. Okay. And why did you call them that day?

A. Because I was an idiot. I had the roommate John Anderson, and he needed a car. He didn't have a car. When he first moved in I thought he had a car but he didn't have a car. This was a bad mistake on my part. So he needed -- he wanted to borrow my car to go to Walmart, which is just down the street on the other side of the freeway in Draper. And it was like an hour or two later, and he still hadn't come back. And I think I was

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trying to call him or get a hold of him, whatever the deal was, I don't remember now because it was such a long time ago. But I -- now I feel like maybe he stole my car. So, that's why I called the police, because I don't know if he stole --

Q. You thought that he had taken your car?

A. Yeah, I didn't really know this person.

Q. Okay.

A. You know.

Q. But you had given him your keys?

A. Oh, yeah.

Q. He just hadn't returned?

A. He couldn't figure out how to start it because the button on the stick shift thing got stuck, so it wouldn't start. So he thought somebody broke into the car. But the transaction with the police was fine.

Q. Okay. Well, let's go through this.

A. Okay.

Q. So you called them. I assume this was at night time, correct?

A. Correct.

Q. I think --

A. No, it was at night. I remember.

Q. Okay. So, up at the top left corner there, there's a time that says 041 and 1:27. Do you see that,

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right under the date of August 20th, 2011?

A. Okay.

Q. Okay. So does that sound about right, around midnight?

A. Must have been.

Q. Okay.

A. So I think he left like around ten.

Q. Okay. So I want to read the second full paragraph here in the narrative. 'I arrived and made contact with Kathy. As I arrived to the front porch area, Kathy was sitting down on her front steps and yelling to herself 'idiot, idiot, you're such an idiot.' I asked Kathy if she was talking to me, because she seemed to be talking to me.'

A. No.

Q. Were you upset when the officer arrived?

A. Yeah, I was mad at myself.

Q. Fair to say that?

A. Very fair.

Q. Okay. Let's go on to the second paragraph.

I'm going to skip a couple lines here. It says, 'I asked her to tell me what had happened. While I was speaking with Kathy, I could tell that she was very intoxicated, her speech was very slurred, and she was barely able to tell me what was happening.'

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Is it fair to say you were intoxicated that night?

A. I guess if it's written down there.

Q. Would that possibly be why you didn't initially remember this call?

A. I initially don't remember this call, because it's been such a long time ago.

Q. This was in 2011, correct?

A. Correct.

Q. Let's turn the page. So, there's this full paragraph here at the top. And let's see, the officer says in his narrative, 'I asked her why she believed John' -- do you see that part?

A. I'm sorry.

Q. It's the third line down from the -- in that first paragraph.

A. 'She said, yes it was', third paragraph?

Q. The first paragraph, I'm sorry, first paragraph, third line. Do you see that?

A. Yes.

Q. It says, 'I asked her why she believed John was not going to be coming back with her vehicle. She at first said she didn't want to tell me. I told her I didn't understand. Kathy started nervously walking back and forth and then whispering something. I told her I didn't understand what she had said. She whispered it

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again.'

A. Oh.

Q. "I asked Kathy if we were the only ones in the residence. She said 'yes'. I told her, I could not help her unless she told me what she was saying, and I asked her once again why she thought John was not going to come back. She told me 'because he's black.'" Do you remember saying that?

A. No.

MS. MARCY: Objection, foundation.

MS. GREGSON: Did I read that correctly?

MS. MARCY: Overly prejudicial.

THE WITNESS: You read it correctly.

Q. You don't remember saying that?

A. No.

Q. You were chuckling when I read it?

A. Yes.

Q. Why are you chuckling?

A. Because I think it's funny.

Q. Why do you think you said that?

A. I don't know, maybe I was still -- probably because of what was going on with Ashley.

Q. Why would that be related?

A. Because Ashley's black, too.

Q. Okay.

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A. And he's already tried to screw me over. I was probably, what do you call it, stereotyping.

Q. So, and you said you were probably -- did you -- do you recall how much you had had to drink that night?

A. No.

Q. Do you usually drink -- how often do you drink?

A. I don't know, maybe a couple of times a week.

Q. Do you drink until you're intoxicated?

A. No.

Q. Never? Or how often do you drink until you're intoxicated?

MS. MARCY: Objection, assumes facts not in evidence.

THE WITNESS: I don't know.

BY MS. GREGSON:

Q. Okay. I want to go down to the last full paragraph on that narrative. So sounds like the officer went and called his supervisor, and he came back and told you that he couldn't do anything to get your car back that night, because it sounded like you had given --

A. Correct.

Q. -- your keys to him? You remember this?

A. Yes.

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Q. Okay. So it says, "Kathy was not very happy with my explanation, and told me she knew her vehicle was stolen. I asked her how she knew. She explained to her -- I explained to her, excuse me, that all of John's stuff was still at her house, and he had only been gone an hour. Kathy got very upset and said, 'I know why you won't help me, it's because that cop beat up the kid next door and I testified against him.'" Do you remember -- did I read that correctly?

Do you remember -- did I read that correctly?

A. Yes.

Q. Do you remember saying that?

A. No.

Q. Do you know why you would have said that?

MS. MARCY: Objection, calls for speculation, asked and answered.

THE WITNESS: No.

BY MS. GREGSON:

Q. Do you feel like the police were not being fair with you that night?

A. I don't remember.

Q. Why don't you remember?

MS. MARCY: Objection, asked and answered.

THE WITNESS: Because obviously I was drinking.

BY MS. GREGSON:

Q. Do you usually have a hard time remembering

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things when you've been drinking?

A. No.

Q. But you did this night?

A. Yes.

Q. Do you feel like the Draper police have been unfair to you since you testified in 2011?

A. No.

MS. MARCY: Objection, foundation.

BY MS. GREGSON:

Q. Any other times that you've called the police? I just want to make sure, because we're gonna talk about another one, if that's okay.

A. All right.

(Exhibit No. 6 was marked for identification.)

BY MS. GREGSON:

Q. This will be Exhibit 6. And you have 6 in front of you. Do you have 6 in front of you?

A. I've sorry. Yes.

Q. I just want to confirm, do you recall this incident?

A. Is this the one I was telling you about earlier, where the neighbors called the police on me?

Q. Let's look at the date. So this is at the top left-hand corner, September 9, 2011. Do you see that?

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A. Yes, I'm sorry.

Q. Okay. All right. And so it says here that 'an officer was dispatched to your house because you called them to tell them that your dog Max was a good dog, and that he loves police officers, and they shouldn't be mean to him.' Do you remember this?

A. Oh, vaguely.

Q. Do you remember why you called them?

A. I think it was because the police were going -- if they came into my backyard without my permission, and Max was back there, I didn't want them to shoot him.

Q. So, did you think that they would be mean to Max?

A. I have no idea. I just hear what goes on on the news.

Q. Okay. So you had heard something in 2011 that made you think they might do something to Max if he was barking?

A. Yeah.

Q. Do you think that the Draper City police would have done anything to Max because of your testimony?

A. Maybe.

Q. Can you elaborate?

A. Not really anything to elaborate about. I

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just don't want anything to happen to him because of -- if, you know -- I don't know what people are gonna do.

Q. Okay.

A. And we did call the police one other time about the bird next door. Goll, we call the police a lot, don't we? There was a parrot and it wouldn't quit talking, it was yelling.

Q. Tell me about the parrot?

A. Well, when Max starts barking, I yell 'Max'. Well, this parrot, it's one of those kind that talks, so I'm yelling at Max to come in the house, and the bird's yelling at Max, too. So the bird's going 'Max', and I'm going 'Max', and so Max is barking and he's running back and forth. So, then he keeps -- the bird is yelling 'mom, mom, mom', and I'm like, 'what is wrong with this kid? Where is the mom?' I don't know it's this bird. So finally I go outside and I'm like, 'what is going on?' And my neighbor's like, 'Kathy, is this bird driving you nuts?' I'm like, 'yes'. I didn't know what it was. So, we both called the police to say can you just go over there and tell the bird -- take the bird inside, because it was driving all of us crazy.

Q. So, do you remember if you called Draper City police?

A. Yes, I'm sure we did. I know I did, I guess.

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Yeah, I guess. I'm guessing, because --

Q. Or maybe animal control, that's what I was getting to --

A. No, I think I just dialed whatever, 911 or whatever it was. I don't know. I didn't like -- I just called the number and so somebody would come over and tell the bird to go in the house, or get the bird to go in the house. Literally the whole backyard patio, they built a patio and then put, what do you call that, chicken coop wire all around it, and then the birds would be out on the patio. Oh, yeah. It drove us nuts. And it was -- anyway, so they've taken that fence down and put up a nice patio, and I don't know what happened to the bird.

Q. So do you recall when this was? Was it before or after the Chatwin --

A. I don't remember, I just remember that happening.

Q. Do you remember the officers came out to your home?

A. They didn't come to my house, they just went to their house, the neighbor's house.

Q. Did you interact with officers at all?

A. No. Not that I recall, but I'm sure you can pull something out of your folder.

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(Exhibit No. 7 was marked for identification.)

MS. GREGSON: So you've just been handed what's marked as Exhibit 7.

A. Oh, I didn't call the police on this.

Q. Okay. So let's talk about this one. So the date up here on the top left, it says 'Report date September 18th, 2011'.

A. Okay.

Q. So you say this is one that you did not call the police on, correct?

A. I don't think so.

Q. Okay. Do you see -- let's see, in the first paragraph here, it says 'on September 18th, 2011, at approximately 2021 hours, I was dispatched to the residence at 12543 South 150 East on a civil problem in progress. The complainant, Kathy Torrence, said an unknown male was at her home trying to serve papers on her roommate.' Did I read that correctly?

A. Yes.

Q. So, it lists you as the complainant?

A. Okay, so I must have called.

Q. So you think you did call?

A. Yeah, I think so.

Q. And do you recall the reason why you called?

A. I guess because I just didn't know what that

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guy was doing at my house. There was a man at my door that I don't know, I guess.

Q. Okay. So it says here that he was trying to serve papers. Do you remember that?

A. Un-huh.

Q. Okay.

A. To my roommate.

Q. And you refused to accept service of the papers because they were for your roommate?

A. Correct.

Q. Okay. Is this the same roommate that took the car?

A. Yes.

Q. And was arrested at some other dates, too?

A. Yes.

Q. Okay. So you think that you called the police just because there was a man at your door that you didn't recognize?

A. Correct.

Q. Last one.

(Exhibit No. 8 was marked for identification.)

BY MS. GREGSON:

Q. Okay. So this is Exhibit 8, do you have that in front of you?

A. Yes.

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Q. Okay. So it sounds like that was your recollection. He hadn't paid rent and you wanted him out, correct?

A. Correct.

Q. Okay. So, what made you decide to call the police that day?

A. Because I wanted him out.

Q. Had you got in an argument with John?

A. I don't remember.

Q. And the following paragraph it says, 'I explained to Kathy that there was a process to evict someone from her residence, especially a renter.'

Do you remember the officer explaining to you the process of evicting a renter?

A. Yes.

Q. Okay. And then the officer goes and talks to John, and I'm gonna read what he says in his report about what John says. 'John told officers that Kathy had been drinking, and was blowing things out of proportion. I asked John if anything physical had taken place, he said no. He told me Kathy had slammed the door in his face, but that was about it.'

So, had you been drinking that day?

A. Yeah, I wanted him out, he was driving me crazy.

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Q. Okay. So let's look at the report date. That says, October 8, 2011?

A. Correct.

Q. This says that an officer was dispatched to your address, and 'the complainant, Kathy Torrence, was having a verbal argument with her renter John Anderson.' Correct?

A. Correct.

Q. So, it lists you as the complainant. Do you remember calling for police help that day?

A. Yeah.

Q. And can you explain to me what was going on?

A. I don't remember. I would have to read this whole thing. I just remember I wanted him out.

Q. Okay. Let's read a portion of it here.

Let's read the second paragraph. So this is the officer speaking. He says, 'I arrived on scene and made contact with Kathy who was outside standing in her driveway. John was on the front porch steps. I asked John to stay on the front porch steps while I spoke with Kathy away from John in the driveway, in front of the garage. Kathy told me she was upset because John had not paid the rent due on October 1st, and she wanted him gone.' Did I read that correctly?

A. Yes, you did.

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Q. So that's why you were drinking?

A. Un-huh.

Q. Do you think you were intoxicated at the time the officer came?

A. Maybe.

Q. Okay. Did you eventually evict John?

A. Yes, I did.

Q. And I assume he eventually came back with his car that night, when you had called the police -- with your car that night?

A. The very, very first night?

Q. Yes, when you had given him your keys and he took your car. Did he come back eventually?

A. Yes.

Q. Okay. All right. So we've just talked about five instances where you had called for police help in 2011, and Draper City responded, and tried to assist you with your problem, is that correct?

A. Correct.

Q. Do you feel like they were responsive to your concerns?

A. Absolutely.

Q. Okay. Do you feel like they, in any way, were retaliating against you because of your testimony?

A. No.

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Q. Would you agree with me that these instances where you called the police because you were having a fight with your friends, or someone at your door that you didn't recognize, were they serious crimes being committed?

A. Serious, meaning somebody broke into my house serious, or serious --

MS. MARCY: Objection, vague and ambiguous.

MS. GREGSON: Okay, let me restate the question for you.

THE WITNESS: Thank you.

Q. So, John purportedly told police on this October 2011 incident that you have a tendency to blow things out of proportion. Would you say that's accurate?

A. No.

MS. MARCY: Objection, foundation.

BY MS. GREGSON:

Q. Do you think it's blowing things out of proportion to call the police when someone is knocking on your door that you don't recognize?

A. No.

Q. Do you think it's blowing things out of proportion to call the police when you want your renter to be evicted?

A. No.

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day before, correct?

A. I believe so.

Q. Okay. Do you recall what you did that night?

A. No.

Q. Did you go straight home?

A. Generally, yes. I mean, unless I have to stop by Heidi and Stefen's to pick up Max, which probably I did, and then I come home.

Q. Hide and Steven Merrin?

A. No.

Q. Stefen Merrin?

A. I have Heidi and Stefen are my friends, and then Heidi and Steven across the street are my neighbors. So sometimes she said I've called them Stefen, but they understand because my good friends are Heidi and Steven.

Q. Interesting, okay. So after you saw Mr. Chatwin go to the ground, you said that you went over to Heidi's house to get the phone number for Mr. Chatwin's grandparents?

A. Correct.

Q. You didn't have the grandparents' phone number yourself?

A. I don't have the ward's -- our ward has everybody's address and their phone numbers. And when Mark and his wife had moved in behind my house, I had

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Q. Do you think it's out of proportion to call the police when you want to tell them that your dog is not an aggressive dog?

A. No.

MS. MARCY: Objection, vague and ambiguous.

BY MS. GREGSON:

Q. Do you think it's blowing things out of proportion to call the police when you loaned someone your keys, and they haven't returned after an hour?

MS. MARCY: Objection, vague and ambiguous.

THE WITNESS: No.

BY MR. GREGSON:

Q. Okay.

A. Especially when I don't know this person. I made a bad call, the whole thing was a bad call. I now only rent to flight attendants.

Q. Okay. I'll take one more quick break and I'll have some clean-up questions, and I'll be done.

A. Okay.

(Whereupon a recess was taken.)

BY MS. GREGSON:

Q. Okay. So, I just wanted to ask you some follow-up questions on some of the things we've already covered. So going back to the night before the incident, the night before May 18th, 2010, you said you worked the

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given them my paper, and I never got another paper. So I didn't have the phone numbers.

Q. And you said that Mr. Chatwin's grandfather would kind of do yard work and help you out with things?

A. Not yard work, he just takes and rolls the trash cans in. And maybe when it snows, he likes to shovel my driveway.

Q. Okay. So why didn't you just walk over to their house since they lived across the street from you?

A. They lived -- they don't live across the street from me, they're over here. Next door -- I'm sorry, next door to Josh's house. And then with the whole thing going on, what I really wanted to do was run out and help Josh, because it's just a natural instinct. But I thought if I did, they'd probably pull their guns on me. So the next best thing was to go over to Heidi's house, just walk straight over there, and have her get the phone number and call them so they could come out and see what's going on.

Q. So you thought if you walked to the other, the house on the other side of Mr. Chatwin's --

A. Correct.

Q. -- house, they would get upset with you? Why didn't you think that --

A. No, no I didn't.

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Q. Why didn't you think that you could go to Mr. Chatwin's grandparents' house, which is on the other side of his house, correct?

MS. MARCY: Objection, assumes facts not in evidence.

MS. GREGSON: Okay. So let's make sure we know where the houses are. So we have Mr. Chatwin's house. Let me make sure I have this right. On the left of his house, if you are facing from your house, is that the Merrins'?

A. Oh, yes, the left.

Q. Okay. And to the right of his house is Mr. Chatwin's grandparents?

A. Correct.

Q. So you felt like you couldn't walk to the house to the right?

A. Correct.

Q. Why?

A. Because I was nervous and shaking and I just didn't know.

Q. Okay.

A. And Heidi's garage door was open, so I just went right over to her house.

Q. You mentioned that you wanted to help Mr. Chatwin?

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A. Yes.

Q. You didn't call 911, call for an ambulance.

A. No, obviously they were already there.

Q. There was an ambulance there?

A. The police were there. If the police were there, why would I call an ambulance? I'm assuming they would do that themselves, which they did.

Q. Which they did. What do you mean by that?

A. The police did. I'm guessing.

Q. Okay. You don't know for sure what they did for him?

A. No, I just remember the paramedics or the fire department, or whomever came to help him.

Q. Okay. So you didn't try to go over and tell the officers 'hey, I saw what you did'?

A. No.

Q. We talked about the field sobriety tests that you observed Mr. Chatwin taking that day?

A. Un-huh.

Q. Have you had a field sobriety test before?

A. No.

Q. You ever seen one given before that day?

A. On TV.

Q. Just on TV, that was it? Okay. Okay. After the incident, after May 18th, 2010, who have you talked

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to about this incident?

A. I don't know.

Q. Can you give me a -- you don't recall anybody you've spoken to?

A. I'm sure I have told people about it.

Q. You don't recall any of those people's names?

A. No.

Q. Have you spoken to Mr. Chatwin about the incident since then?

A. To Josh?

Q. Yes.

A. Yes.

Q. How many times would you say you've spoken to him about it?

A. The next day. I'm sorry, the day his father came over to tell me, to introduce him to me.

Q. When was that?

A. He'd gotten out of the hospital, I'm guessing it was the next day. Could have been a week later. At some point he had brought Josh over to introduce him to me.

Q. And what did you guys discuss?

A. Just what happened. He didn't remember.

Q. What did you say?

A. I don't remember.

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Q. You don't recall talking to him about anything in particular?

A. No.

Q. Have you had other conversations with Mr. Chatwin's parents about the incident?

A. Not that I recall.

Q. Okay. So nothing after that first time when he brought over Josh to meet you?

A. As far as I can recall.

Q. Aside from his parents, have you spoken to Mr. Chatwin's grandparents about the incident?

A. Not really. I don't want to upset his grandfather, and I've never really talked to his grandmother.

Q. Okay. Have you talked to any of your other neighbors about the incident?

A. No.

Q. Any coworkers?

A. Yeah.

Q. Do you recall who?

A. Not really.

Q. No? Do you have co-workers you socialize with that you might have --

A. Outside of work?

Q. Yeah.

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A. I don't really socialize with people at work.

Q. So you wouldn't have?

A. From Salt Lake.

Q. But you might have mentioned it to people that you work with while you were at work?

A. I could have, I don't remember.

Q. Okay. I noticed when you got here that you said 'hi' to Josh and you gave him a hug?

A. Un-huh.

Q. Do you hug Mr. Chatwin a lot?

A. No.

Q. Would you say that you hug all your neighbors?

A. Maybe. Not all my neighbors, no. I gave him a hug.

Q. Not the neighbor with the bird?

A. I would have hugged her. If I saw you out of here, I'd probably hug you.

Q. You're a hugger?

A. Yeah.

Q. Okay. Do you tell people 'love ya', like in an endearing way, very often?

A. Well, yeah. I can say that.

Q. Have you said that to Mr. Chatwin?

A. Maybe.

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Q. So you testified earlier, I believe, that you hadn't seen anyone arrested before this incident with Mr. Chatwin?

A. I mean, if I do, I don't remember.

Q. Okay. You did see Mr. Anderson get arrested at your house, right?

A. I saw them go downstairs, and I saw them handcuff him and walk him out.

Q. You saw him in handcuffs?

A. Yeah, he was in handcuffs.

Q. Was Mr. Anderson the first roommate you've had at your house?

A. No.

Q. Have you rented rooms to other people?

A. Yes.

Q. Do you recall their names?

A. Just Milty, he's a pilot for Delta.

Q. Is that -- can you give me that person's full name?

A. I don't remember it.

Q. Pilot for Delta, Milty?

A. Yeah, we called him Uncle Milty. He was only there for like four months.

Q. That's the only person that you've rented to other than Mr. Anderson?

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Q. Would you say that hugging someone, telling them 'love ya', is something that you would say to someone you're close to?

A. I could say it to just about anybody.

Q. So, are you close to Mr. Chatwin at all?

MS. MARCY: Objection, vague and ambiguous.

BY MS. GREGSON:

Q. How often do you and Mr. Chatwin talk?

A. Maybe twice a year.

Q. Okay. Do you know the name of the neighbor that had the bird that you called the police on?

A. No.

Q. You don't recall?

A. No, I don't know their names.

Q. Which neighbor, do you know their address?

A. No.

Q. You said it was the house next door?

A. Right.

Q. Which, north or south of you?

A. South.

Q. South, okay.

A. That's bad, I've lived there for ten years, I don't know their names. They told me the little boy's name and the little boy told me his name. I don't know how many times, it doesn't stick.

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A. Well, Trina and Ashley actually lived there prior to that, because Trina sold her house and they needed a place to live before -- until she could find a house. So the two did actually live there. Before that, nobody.

Q. Have you ever been married before?

A. No.

Q. You testified earlier that you might drink two or three times a week, is that correct?

A. Un-huh.

Q. Do you drink with friends or by yourself?

A. Depends.

Q. If you are drinking with friends, who would they be?

A. Nobody in town.

Q. Can you be more specific? Are they friends from work?

A. Yes.

Q. Okay. Where would they be if they're not in town?

A. Dallas, Los Angeles.

Q. Do you know their names?

A. Yes.

Q. Can you tell me?

A. Veronica.

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Q. Okay. Do you know a last name for Veronica?

A. **Ochoa.**

Q. Ochoa?

A. **Un-huh.**

Q. Any others?

A. **Just Laura, if they're in town. You know, they'll come into town, like Laura, I'm picking her up today and then she's got to go to training.**

Q. Laura, what's her last name?

A. **Pease.**

Q. Pease? Any others?

A. **No.**

Q. Okay. So Veronica and Laura. So you understand that Mr. Chatwin has sued Draper City, and the police officers that were involved in the incident, correct? Do you have an understanding of that?

A. **I do now.**

Q. Okay. Do you have any understanding about what this lawsuit is about?

A. **No.**

Q. Okay. Do you have any idea of what you would like to have happen because of this lawsuit?

MS. MARCY: Objection, vague and ambiguous.

THE WITNESS: I don't want anything to happen. What do you mean?

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you aware that you're the only witness that has said that Mr. Chatwin was thrown to the ground that day?

A. **No, I do not.**

Q. Does knowing that make you feel like you have an obligation to Mr. Chatwin to testify in a way that would support him?

MS. MARCY: Objection, argumentative.

THE WITNESS: If I saw him hit the officer, I would say the truth. I'm just here to tell you what the truth is, what I saw, what I personally saw. What I saw, that's it.

Q. Is there anything you would like to have happen because of your testimony today?

MS. MARCY: Objection, asked and answered.

THE WITNESS: I don't understand what you are asking me.

BY MS. GREGSON:

Q. Would you like anything to happen because of your testimony today?

MS. MARCY: Objection, vague and ambiguous.

MS. GREGSON: Do you feel like Draper City should be punished?

A. **No. When you say punished, what do you mean?**

Q. What do you think I mean?

A. **I'm asking you, because I don't understand**

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Q. Do you want anything to come out of this case?

MS. MARCY: Objection, vague and ambiguous.

THE WITNESS: Like what?

Q. Well, can you answer the question?

A. **I don't understand it.**

Q. Okay. What would you like to see happen because of this lawsuit?

MS. MARCY: Objection, assumes facts not in evidence. Vague and ambiguous.

THE WITNESS: I'm here to answer the questions you're asking me. All I'm doing is telling you what I saw. I don't know what he is suing for, or -- I'm just answering your questions.

Q. So Mr. Chatwin hasn't talked to you about what he's suing for?

A. **No.**

Q. Okay. Do you understand that -- do you know if there are any other witnesses that saw what you saw on May 18th, 2010?

A. **I do not.**

Q. Is it your understanding that you're the only witness, other than the officers and Mr. Chatwin?

A. **I have no idea.**

Q. You don't have an understanding of that? Are

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what you are saying, 'punished'.

Q. Well, you understand this is a civil lawsuit, right? There's a lawsuit that's been filed?

A. **I understand that.**

Q. Do you think they should be penalized by a court because of -- through the lawsuit?

A. **Penalized in what way?**

MS. MARCY: Objection, vague and ambiguous.

BY MS. GREGSON:

Q. In any way?

A. **I have no motivation here other than to tell the truth. I don't -- on one side or the other.**

Q. Okay. I have no further questions.

MS. MARCY: I have a few. You've got to be out of here by what, no later than 12:30?

A. **Yeah.**

Q. All right. On the morning of May 18th, 2010, Ms. Torrence, how did you feel?

A. **Felt great.**

Q. Okay. Let's talk a little bit about the time period while you were watching this -- we keep calling it an incident, for purposes of making this easy, right? You said earlier that Officer Baugh knelt down after -- we're talking after Mr. Chatwin was thrown to the ground. And that I think officer -- one of the officers patted

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him on the shoulder, the one that threw him to the ground?

A. Correct.

Q. And then the female officer knelt down?

A. Correct.

Q. Was there anything, any other actions that the police officers took, any of them, before the paramedics, EMTs arrived?

A. After he threw him down, I stood there for -- debating what to do. I mean, either run across the street and help him, which I figured that wouldn't be a good idea, because, you know, you're dealing with police and this issue just happened, or wanting to have the parents know, or the grandparents know what was going on. So at that point, once I saw that, and determined I needed to go and get help, I ran across to Heidi's. Anything that happened after that, I don't know.

Q. Did you see -- did you notice anything about Mr. Chatwin's condition?

A. When he was laying on the ground?

Q. Right. What did he look like to you?

A. His head was like red and purple.

Q. When you say red and purple, how did you know that?

A. You could see it. You could see bright red

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and you could see the purple, it was very scary.

Q. When did you have, during that time period -- and let's go back for a minute. From the time that Mr. Chatwin was thrown to the ground, and the time you left the window that you were looking through, could you estimate about how long that was?

A. No.

Q. Okay. Would it be less than ten minutes?

A. Sure, yes.

Q. Less than five?

A. Yes.

Q. All right. More than two?

A. We were getting kind of -- I'm -- you know, I mean, when your adrenaline's pumping, it could have been 15 seconds. It wasn't -- I just saw it and you're like, 'oh, my God, oh my God', what do you do? You know it's like, you want to help them, no that's not a good idea. And I'm a fast thinker, so it could have been five seconds and I went out the garage door to cross to Heidi's. I couldn't tell you exactly the time frame, but it was -- it was a short amount of time.

Q. Did you see -- did you see, when you said they -- but you were there long enough to see them kneel down and one of them pat the shoulder?

A. Yes.

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Q. Did you see them --

A. He tapped him a couple of times.

Q. Did you see either of the officers, or any of the officers do anything else?

A. No.

Q. Anything as far as, as a lay person, you would recognize as being checking on him?

A. No. Not that I recall.

Q. Any aid to him?

A. No, because at that point we went over -- I went over and got Heidi, then we went to the next door neighbor's to the left of Heidi's house, and got the phone number. When we came back out, Josh was now propped up. And I think there was -- it was like a red fire engine, a red truck. I don't recall what kind of car it was, and you could see the blood coming out of his ear.

Q. When you say 'propped up', propped up against what?

A. The tire of the truck.

Q. Of what vehicle?

A. I don't remember exactly. I want to say it would be the medic, the paramedic truck, or whatever that truck was that was there. Like, whatever that truck was. It wasn't like -- I don't think it was a police

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officers's truck, but I can't be absolute for sure.

Q. And you said --

A. He was sitting up.

Q. And you said he was bleeding?

A. Yes.

Q. Could you tell from where?

A. You could see it was coming out of his ear, coming down the side of his head.

Q. Describe for us then, what did Mr. Chatwin look like at that point, his condition just generally?

A. Kind of out of it.

Q. What do you mean 'out of it'?

A. Well, I guess the way anybody would feel when their head was slammed against the ground. You know, you don't really know what just happened, and you're kind of -- you're just sitting there kind of dazed.

Q. His eyes were open?

A. Yes.

Q. And what was his -- could you demonstrate and shows us what his body looked like, leaning against the vehicle?

A. I don't remember.

Q. Did you notice his hands?

A. They were handcuffed.

Q. Behind his back or --

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A. I believe so. Yeah, he was still handcuffed.

Q. As he was propped against the vehicle?

A. Un-huh.

Q. No other questions.

MR. JOHNSON: At no time did he ever have his hands in front of him when he was cuffed?

THE WITNESS: Not that I recall.

MS. MARCY: No questions.

BY MS. GREGSON:

Q. Just a couple more. Do you know the names of the officers that were there --

A. No.

Q. -- that day?

A. No.

Q. To this day you don't know their names?

A. No.

Q. Okay. When you saw Mr. Chatwin propped up and there was a fire engine on the scene, did you hear Mr. Chatwin saying anything at the time?

A. No.

Q. He wasn't yelling, or anything like that?

A. No.

Q. Okay. Did you observe the paramedics taking care of Mr. Chatwin?

A. No.

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A. Not that I recall.

Q. Okay. I don't have any more questions.

MS. MARCY: We're done.

MS. GREGSON: So, Ms. Torrence, you have the opportunity to read your transcript of your testimony today, before it's finalized, and correct any errors, any typos that you might find. That's your option. You can do it if you want to or not, but you just need to coordinate with Linda to get her to send that to you.

THE WITNESS: Okay.

(Whereupon the deposition was concluded.)

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Q. You didn't see them providing any aid to him or anything like that?

A. I didn't see that.

Q. At that point what were you doing?

A. I don't remember.

Q. So --

A. The last thing I remember would be coming out of -- getting the phone number and seeing Josh propped up against whatever medical vehicle that was. And people were around. And then it was like chaos, everybody was around. So I don't really remember a lot after that point. Maybe if you asked me that day I would have remembered, but at this time no, I don't remember.

Q. Were you paying attention to Mr. Chatwin when all those people were running around and it was chaos?

A. And just looking at him?

Q. Yes.

A. I looked at him and then I saw his grandparents were there and his grandparents were crying, or at least his grandmother was.

Q. So you were --

A. There was like people there now to take over, and --

Q. Okay. And again, you didn't say anything to his grandparents that you recall?

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STATE OF UTAH)
COUNTY OF SALT LAKE)

I, LINDA J. SMURTHWAITE, a Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of Utah, residing in Utah, certify:

That the deposition of Kathy Torrence was taken before me pursuant to Notice at the time and place therein set forth, at which time the witness was by me duly sworn to testify the truth.

That the testimony of the witness and all objections made and all proceedings had at the time of the examination were recorded stenographically by me and were thereafter transcribed. And I hereby certify that the foregoing deposition transcript is a full, true, and correct record of my stenographic notes so taken.

I further certify that I am neither counsel for or related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 3rd day of December, 2015.



LINDA J. SMURTHWAITE
Certified Shorthand Reporter
Registered Professional Reporter
and Notary Public in and for the
County of Salt Lake, State of
Utah.

My Commission Expires:
March, 2016

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Case: Chatwin V. Draper City

Date: November 19, 2015

Reporter: Linda Smurthwaite, RDR

WITNESS CERTIFICATE

State of Utah)

ss.

County of Salt Lake)

I, Kathy Torrence, HEREBY DECLARE: That I am the witness referred to in the foregoing testimony; that I have read the transcript and know the contents thereof; that with these corrections I have noted this transcript truly and accurately reflects my testimony.

PAGE-LINE	CHANGE/CORRECTIONS	REASON
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No corrections were made.

Kathy Torrence

Dated this _____ day of _____, 2015.

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EXHIBIT 2
WIT: Torrence
DATE: 11-19-15
L. SMURTHWAITE, RDR



5-18-2010 APPROX

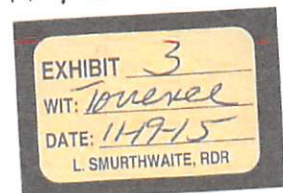
12:00P.M. 1ST

THIS OCCURRED ACROSS THE ST
FROM MY HOME.

AT APPROX 12:00P.M. I WITNESSED A DRAPER CITY POLICE TRUCK PARKED AT A SOUTHERN ANGLE BEHIND MY NEIGHBORS WHITE CAR. THE OFFICER APPROACHED THE CAR. THE "MAN" IN THE CAR HANDLED OVER PAPER WORK TO THE OFFICER. THE OFFICE RETURNED TO HIS TRUCK ROLLED UP HIS WINDOW. NEXT 2 MORE FORD EXPLORES ARRIVED (DRAPER POLICE) 1 WOMAN OFFICER (LATIN) ONE MALE OFFICER (WHITE). THEY EXPLAINED HOW TO DO THE SOBERITY TEST. THE "MAN" TRIED TO DO THE TEST BUT DID NOT DO TO GOOD. I ALSO NOTICED HE REFUSED A BREATH ALIZER TEST. AT WHICH POINT THEY HANDCUFFED HIM. THE 1ST OFFICER WAS TAKING PICS OF THE CAR (BACK) AND INSIDE. A BOTTLE IN A BROWN BAG WAS REMOVED. (ALSO IN THE BEGINNING THE OFFICERS DID A PAT DOWN HE LIFTED HIS SHIRT TO SHOW NOTHING WAS HIDDEN) THE SECOND OFFICER TOOK THE MAN (THE 1ST OFFICER WAS REMOVING STUFF, JACKET RIFEL IN CASE MISC. TO THE BACK (BED) OF THE TRUCK. ONCE DONE THE 1ST OFFICER WENT BACK TO THE WHITE CAR THE SECOND OFFICER TOOK THE MAN TO THE TRUCK. WITH HIS HANDS HANDCUFFED BEHIND HIM. HE PUT THE MAN AGAINST THE TRUCK FACING THE TRUCK, BEHIND THE SECOND DOOR. ON DRIVERS SIDE. I SAW THE MAN SAY SOMETHING TO THE OFFICER BEHIND HIM AT WHICH POINT THE OFFICER GRAB THE MAN BY THE HANDCUFFS AND

(THE MAN LOOKED MY WAY OVER HIS SHOULDER WHEN HE SAID SOMETHING TO THE OFFICE RIGHT B-4 THE COP TALKED HIM TO THE GROUND)

Chatwin270



IN A COUNTER CLOCKWISE TURN. THRU THE MAN TO THE GROUND AT AN AGGRESSIVE MANNER WHERE THE MAN'S HEAD HIT THE CONCRETE WITH SUCH FORCE HIS HEAD BOUNCED. THE FEMALE OFFICER CAME OVER AND THRU HER HANDS IN THE AIR TALKING TO THE 1ST OFFICER LIKE "WHAT WAS THAT". THE MAN'S FACE WAS BLUE AND RED HE LAYED MOTIONLESS ON THE CEMENT. THE SECOND OFFICER CONTINUED TO DO SOME TOUCHING OF THE MAN'S HANDCUFFS. HE PATTED HIM ON THE SHOULDER BLADES AT LEAST 2 DIFFERENT TIMES, ~~AND~~ THE 1ST OFFICER DIDN'T COME OVER AND THE FEMALE AND SECOND OFFICER STAYED WITH THE MAN. HE WAS BLEEDING FROM THE LEFT SIDE OF HIS HEAD. ANIMAL CONTROL ARRIVED, SUPERVISOR ARRIVED ALONG WITH THE FIRE DEPT. I WENT TO MY NEIBOR HENRI'S TO GET IT'S FOR DAVE + BARBARA (GRAND-PARENTS) AND SCOTT + DEBBIE (PARENTS) SHE HELPED FACILITATE GETTING THE IT'S FOR (GRANDPARENTS) FROM HER NEB'S ON THE SOUTH SIDE. I LIVE DIRECTLY ACROSS THE STREET AND WITNESSED THE ENTIRE ARREST.

THE WHITE CAR WAS LATER TOWED. I SUBMITTED A REPORT TO THE SUP. KURT ON 5-18-2010.

MY SHUTTERS WERE COMPLETELY OPEN AND ROLLED UP. I STOOD DIRECTLY IN FRONT OF THE WINDOW WITH AN EXCELLENT VIEW.

DID THE PEN TEST (EYES FOLLOW)
GRAB YOUR CHIN
WALK A LINE

~~HE SHOULD SHOWED HIM~~

FOOT OUT IN FRONT 

HE ~~KEPT~~ ^{WOULD} TALK TO THEM, PUT
HIS ARMS OUT ~~AT~~ THEN THE 1ST OFFICER
WENT TO HIS TRUCK TO GET THE
BREATH-A-LIZER, THE MAN REFUSED
SO HE TOSSED IT ON THE GROUND AND
HANDCUFFED HIM

THE 2ND OFFICERS TRUCK WAS #
627

THE MAN WAS WEARING FLIP FLOPS
SHORTS (BEIGE) AND T-SHIRT (DARK
COLORED)


		Draper City Police Department WITNESS STATEMENT		Case Number 2010-003060
Name KATHY TORRENCE		Date of Birth 11-4-60	Home Phone 801 878-9332	
Street Address 12543 S. 150 EAST			Mobile Phone 909 489-9673	
City DRAPER	State UT	Zip Code 84020	Work Phone .	
Driver's License/ID Number 152774266		E-mail Address		
Details of Events:				
<p>AT APPROX 12:00 P.M. I FITNESSED THE NEIGHOR BEING PULLED OVER IN HIS DRIVEWAY. THE OFFICER APPROCHED THE VEHICAL. THE DRIVER HANDED THE OFFICER PAPERS OF SOME SORT. 2 MORE OFFICERS ARRIVED ON THE SCENE ^{SCENE}. (1) MALE (1) FEMALE OFFICER THEY PROCEEDED TO ADMINISTER A SOB SOBRITY TEST. THEY HANDCUFFED THE GENTLEMEN AND WALKED HIM TO THE OFFICERS TRUCK. HE WAS HANDCUFFED FACING THE CAR (TRUCK) WHEN THE SECOND OFFICER ON THE SCENE GRAB THE BOY BY THE HANDCUFFS, WHIPPED HIM AROUND SO HARD THAT WHEN HE HIT THE PAVEMENT HIS HEAD BOUNCED UP. THAT'S WHEN I SAW THE BLOOD COMING OUT OF HIS HEAD. HE LAYED IN THE STREET. HIS FACE WAS RED AND BLUE DUE TO THE HEAD TRAMA. I WITNESSED EXCESSIVE FORCE TO A BOY WHO WAS HANDCUFFED WITH HIS BACK TO THE OFFICER. I ALSO SAW THE FEMALE OFFICER THROW HER ARMS IN AIR IN A QUESTION MANNER TO THE ORIGINAL OFFICER AFTER IT HAPPENED.</p>				
<p>Pursuant to Rule 1102, Utah Rules of Evidence and Section 76-8-504.5, Utah Code Annotated: You are hereby notified that the statements made herein may be presented to a magistrate or judge in lieu of your sworn testimony at a preliminary examination. <u>Any false statement you make and that you do not believe to be true may be subject to criminal punishment as a Class A Misdemeanor.</u></p>				
I have read and understand the statement above. <i>Kathy Torrence</i>				Date: 5-18-2010

EXHIBIT B

1 IN THE THIRD DISTRICT COURT -SALT LAKE

2 SALT LAKE COUNTY, STATE OF UTAH

3
4
5 STATE OF UTAH, :

6 PLAINTIFF. :

7 VS. :

CASE NO. 101401517FS

8 JOSEPH CHATWIN, :

9 RESPONDENT. :

10
11 PRELIMINARY HEARING - FEBRUARY 8, 2011

12 BEFORE

13 THE HONORABLE CHARLENE BARLOW

14
15
16
17
18
19
20 Transcribed by Lisa Freebairn

1 A Yes.

2 Q That you (inaudible) him to your left?

3 A Yes, I moved him to my left away from the weapon
4 side.

5 Q Okay. Although - okay. You're sure about that?

6 A Yes, sir.

7 Q Okay. All right. Okay.

8 (Inaudible)

9 MR. JOHNSON: Okay. (Inaudible). Thanks.

10 THE COURT: You may step down. Thank you, officer.
11 Does the State have any other witnesses?

12 MR. HILL: No, Your Honor. The State will rest at
13 this time.

14 THE COURT: Kay.

15 Mr. Johnson?

16 MR. JOHNSON: Yes, Judge. Could we call Kathy
17 Torrence to the stand, please?

18 THE COURT: Kay.

19 MR. UNKNOWN: Who is it?

20 MR. JOHNSON: Kathy Torrence, thanks. Thank you.

21 THE COURT: Right here.

22 KATHY ANN TORRENCE

23 Having been first duly sworn,

24 testified upon her oath as follows:

25 THE COURT: If you'll have a seat right up here? And

1 pull the chair up to the microphone. We have to record these.

2 THE WITNESS: Kay.

3 THE COURT: So. Thanks. Kay, thank you.

4 Go ahead.

5 MR. JOHNSON: Ready?

6 THE WITNESS: Ready.

7 MR. JOHNSON: Okay.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Could you please state your full name, spell your
11 last name for the, well, first and last name for the Judge,
12 please?

13 A Kathy Ann Torrence. Kathy with a K. Ann. T-O-R-R-
14 E-N-C-E.

15 Q Kay. Kathy, you're a resident of Salt Lake County
16 are you not?

17 A Yes, I am.

18 Q All right. I would like to draw your attention to
19 some events that took place in, the date of, (inaudible)
20 memorized, May 18th of 2010. Living in Draper at the time?

21 A Yes, I was.

22 Q Did you see something happen outside or close to your
23 residence?

24 A Across the street, yes, I did.

25 Q Okay. Would you mind telling the Court what your

1 recollection of the events on May 18th of 2010 were?

2 A The entire?

3 Q Sure, from soup to nuts, from beginning to end.

4 A Takeoff to touchdown?

5 Q Yeah, sure.

6 A Okay. I noticed that a police car had pulled in
7 behind my neighbor's car that's directly across my street.

8 Q Uh-huh (affirmative).

9 A And-

10 Q - who are your neighbors?

11 A The Chatwin's.

12 Q Chatwin, so you know Josh, don't you?

13 A Yes, I do.

14 Q Have you developed a friendship with Josh? I mean-

15 A - prior to the date of this happening?

16 Q Yeah.

17 A I didn't even know who he was before this happened.

18 Q Okay. All right. Go ahead, please.

19 A Okay. So, anyway the officer approached the car and
20 asked him, apparently he gave him some paperwork and Josh got
21 out of the car and the officer patted him down. And-

22 Q - kay, let me stop you right here, I'm sorry. And I,
23 again, (inaudible) I don't, I don't track well if I don't ask
24 questions (inaudible). When you're viewing this scene, your,
25 you indicated you're across the street from?

1 A Correct.

2 Q Okay. Do you recall what time of day this was?

3 A It was around noonish.

4 Q Noon. Do you recall the weather conditions that day?

5 A It was sunny beautiful day.

6 Q (Inaudible)-

7 A No snow. Nothing.

8 Q Anything that might have caused you not to see, or
9 anything obscuring your vision?

10 A Nothing.

11 Q Trees?

12 A No, no trees at all.

13 Q Telephone pole?

14 A No telephone poles. Nothing.

15 Q No (inaudible)?

16 A Nothing.

17 Q Okay.

18 A Yeah.

19 Q All right. And how far are you away - you said about
20 50 feet away?

21 A Correct.

22 Q Okay. So you see - what do you see?

23 A Well, I see the officer's truck pull in kind of
24 catty-corner. And he's parked, you know, he pulls straight in.
25 And then he pulled in, you know, like facing, kind of like

1 south. It wasn't straight in or, it was just kind of, you
2 know, in.

3 Q Okay. Do you recall what color that truck was?

4 A It was white.

5 Q White. Okay. Go ahead.

6 A So anyway, at which point they, they gave him a
7 sobriety test. But before that happened, two other police
8 trucks show up.

9 Q Okay. All right.

10 A Well, you know, Ford Explorers.

11 Q Okay. All right.

12 A Those pull up. And then, so they start administering
13 the, you know, to see if you're, what do you call it?

14 Q (Inaudible).

15 A Sobriety test.

16 Q Field sobriety tests?

17 A Yes.

18 Q Okay. Are they, is that anywhere close to the, the
19 cars that you saw or (inaudible)?

20 A Well, it was in the street right next to, like here's
21 the driveway and then the sidewalk, of course.

22 Q You know what, it might be helpful. There's, I don't
23 want you-

24 A - want me to draw pictures?

25 Q Yeah. Would you mind?

1 A No.

2 Q If, if there's someway - (inaudible) save that,
3 preserve that, that drawing (inaudible)-

4 MS. UNKNOWN: Do you have another one?

5 MR. JOHNSON: I don't know.

6 THE COURT: That's it.

7 THE WITNESS: That's all we get?

8 MR. JOHNSON: Yeah.

9 THE COURT: The only one we got.

10 MR. JOHNSON: Maybe, how (inaudible) that upper left-
11 hand corner?

12 THE WITNESS: Okay. So, what would you like me to
13 draw?

14 Q (BY MR. JOHNSON) You, it's your call.

15 A Okay.

16 Q But just don't draw on that one.

17 A Okay. That's, we can, I guess we can still go with
18 that. I guess that would be north?

19 Q Sure.

20 A Okay. Can I just talk about this picture?

21 Q Of course.

22 A Okay.

23 Q That'd be helpful.

24 A I don't know what this is, but I'm guessing that's
25 the car?

1 Q Okay.

2 A Okay. So-

3 Q - whose car?

4 A Josh's (inaudible).

5 Q Okay. All right.

6 A The white car.

7 Q Okay.

8 A Okay. So this would be the officer's car, but this
9 isn't where it was. It was actually over here more.

10 Q Okay.

11 A This is the garage door.

12 Q Okay.

13 A And then this would be, you know, so it's like, it's
14 like right here.

15 Q Okay.

16 A Right (inaudible).

17 Q Do you want maybe dotted line-

18 A - (inaudible)-

19 Q Okay. What - dotted line's fine (inaudible).

20 A (Inaudible).

21 Q Yeah, whatever.

22 A (Inaudible)?

23 Q Yeah, whatever. Or do dotted lines so we know that
24 it's your drawing.

25 A (Inaudible) I can just use different colors.

1 Q That would be good.

2 A Okay. I have (inaudible).

3 Q Okay.

4 A (Inaudible), okay. So his car was parked right here.

5 Q Yeah.

6 A Okay. And there, and that was the officer's. And
7 this is the sidewalk.

8 Q Kay.

9 A There's a sidewalk. And the sidewalk (inaudible).

10 Q Kay.

11 A And the other two officers, I don't know what this is
12 supposed to be, but-

13 Q - what you remember.

14 A They were parked in front of the street.

15 Q Okay.

16 A You know, in front of the house (inaudible).

17 Q Okay.

18 A And then (inaudible). Those guys come over and then-

19 Q - who's those guys, please?

20 A Oh, sorry.

21 Q It's okay.

22 A The police officers. The two, the two, the original
23 guy was there.

24 Q Okay.

25 A Who pulled him over. And then two more came. A man

1 and a woman.

2 Q Okay.

3 A And so they all came over here. This is the
4 sidewalk.

5 Q Kay.

6 A (Inaudible).

7 Q Kay. Go ahead, you're doing good.

8 A (Inaudible) and they were telling him what to do, you
9 know, like-

10 Q - the field sobriety tests, sure.

11 A - you need to, you know, do all that stuff.

12 Q Kay.

13 A So then at which point they determined that they
14 wanted to give him a Breathalyzer. And so he said no, I'm
15 guessing, cause then the officer threw him in the grass and
16 then they handcuffed him.

17 Q Kay. Do you remember how he was handcuffed?

18 A Behind his back.

19 Q Okay. All right. Then what happened, please? And
20 if you need to-

21 A - (inaudible).

22 Q And if you need to sit down, please do.

23 A (Inaudible).

24 Q Yeah, okay.

25 A Then they, you know, they check him again to make

1 sure he didn't have any weapons or anything on him. And then-

2 Q - now, so we've indicated there are three officers.

3 Do you remember how many officers checked him for weapons?

4 A Two.

5 Q Two. Who were they?

6 A The original officer and then the next male officer.

7 Q Okay. Now, do you recognize this officer that's
8 seated at counsel table? No?

9 A No.

10 Q If you don't, you don't.

11 A I don't.

12 Q Okay. All right. So there was a second, there were
13 two-

14 A - I mean, I can say to you kind of, but I'm gonna say
15 no.

16 Q Okay. All right. What happens next, please?

17 A Okay, so then, the first officer goes into the back
18 of, he has a pickup truck with, you know, a King cab, you know,
19 so there's like two cabs - two, there's a back seat and a front
20 seat.

21 Q Right.

22 A And he starts taking stuff out of the back of his
23 truck.

24 Q Uh-huh (affirmative).

25 A And then putting it in the back of the pickup truck.

1 Q Okay.

2 A You know, you could tell like one was a rifle. He's
3 just putting stuff to, so they can make room for him to get in.

4 Q Him - who?

5 A Josh.

6 Q Josh, okay.

7 A You know, cause they're gonna take him apparently.
8 So he's handcuffed and they've got him next to the, the car.

9 Q Josh? Let's see if, if we can give names, that would
10 be great.

11 A Oh, okay. So after he does all that, the first
12 officer goes back to the white car.

13 Q Kay.

14 A And then the other male officer takes Josh and has
15 him stand behind the, on the side of the truck. So you've got
16 the two doors and then you have, like the, the bed of the
17 truck.

18 Q Okay.

19 A So he's standing there handcuffed.

20 Q Okay. So at this point you're gonna have to help me
21 out.

22 A Draw pictures again?

23 Q (Inaudible) diagram over here. So where is Josh with
24 the second officer? Approximately?

25 A Well, let's just say (inaudible). He's, he's behind

1 the first, the second door.

2 Q Josh?

3 A Yes, Josh is behind the second door.

4 Q All right.

5 A On the left because then they're just gonna put him
6 in the truck.

7 Q Okay.

8 A So he's like (inaudible) pickup truck that is, you
9 know.

10 Q Kay. All right.

11 A But he's just, you know, like here's the door and
12 standing (inaudible).

13 Q Kay. And can you hear anything at this point?

14 A I can't hear nothing.

15 Q All right. All right. So what, what, what happens
16 to Josh next? And again, he's facing the pickup truck. Does
17 he stay facing the pickup truck?

18 A Uh-huh (affirmative), yeah, he's facing (inaudible).

19 Q Is he standing upright?

20 A Uh-huh (affirmative).

21 Q Okay. Then what happens?

22 A Then he turns like and looks in my direction and he's
23 saying something to the officer.

24 Q Looks toward, toward your-

25 A - like (inaudible) he's talking.

1 Q Uh-huh (affirmative). Okay.

2 A So then the officer, whatever, whatever was said, the
3 officer got mad and grabbed him. Just threw him down to the
4 ground.

5 Q Okay.

6 A Nothing happened to - whatever he said made that
7 officer mad.

8 Q Okay. All right. So let me ask you, because this is
9 a pretty fast sequence.

10 A Sorry.

11 Q Did you - that's fine, that's fine. So your
12 testimony is the officer is facing Josh?

13 A He's standing behind Josh.

14 Q And where's Josh facing?

15 A He's facing north.

16 Q Okay. Did you see Josh moving his hands toward the
17 officer?

18 A No, he did not.

19 Q Did you see Josh reaching (inaudible) the officer's
20 belt?

21 A No.

22 Q Did you see the, Josh undo the gun clip on the
23 officer's holster?

24 A - he did not do that.

25 Q - Are you sure?

1 A I'm absolutely positive. Guarantee it just did not
2 happen.

3 Q (Inaudible)?

4 A Because he was, he was standing there just talking.
5 And I'm watching the whole thing.

6 Q Okay. Did you see Josh head butt the officer?

7 A He did not do that.

8 Q You're sure?

9 A I'm absolutely positive.

10 Q Why?

11 A Why am I positive?

12 Q Yes.

13 A Because I would have, I mean, how do look this way
14 and head butt somebody?

15 Q Yeah, okay.

16 A I mean, he's just handcuffed, looking, and then he's
17 talking. And then he whipped by the arm and whipped him
18 around.

19 Q Okay. And then what happened to Josh after that?

20 A What happened to him after that?

21 Q Yeah. He whipped him around, where did Josh land?

22 A Out in the gutter.

23 Q Kay. So-

24 A - so you have the, the rest of the driveway.

25 Q Uh-huh (affirmative).

1 A The sidewalk, the driveway. And his head was down in
2 the, kind of like in the street. So where the water would run
3 on the gutter.

4 Q Yeah.

5 A That's where his head ended up.

6 Q Okay. So if, if the officer is behind Josh?

7 A Correct.

8 Q Did the officer throw Josh to his left?

9 A Counterclockwise.

10 Q To his right, counterclockwise?

11 A Uh-huh (affirmative).

12 Q So literally-

13 A - yeah.

14 Q Spun him around?

15 A Just like that.

16 Q Okay. Not to his left?

17 A I mean, if he took him, if he was to grab him and go
18 like that with him, he didn't do that. He just went, Wham!

19 Q Yeah. And let's talk about how he grabbed him, okay?
20 So, Josh has got his hands behind his back?

21 A Correct.

22 Q How did he, how did the officer grab him?

23 A By, by his arm. Like, you know, like this-

24 Q - which arm - left arm, right arm?

25 A It would be his left arm.

1 Q Okay. All right. And then what happened?

2 A And then what happened then, the female officer was
3 standing kind of like, so you have, what had happened, she was
4 just like, Huh, what, what was that all about?

5 Q Uh-huh (affirmative).

6 A And then she went over and told the other, cause the
7 first, the original officer, he never, never went over to Josh
8 to see if he was okay or what was going on. In the meantime,
9 you're looking at Josh's head and it's turning bright red and
10 purple. Cause you can tell, it's like, you know, there's blood
11 obviously, there's a problem. So she went and told the guy,
12 the original officer in his car, oh, in Josh's car, cause he
13 was still rifling through it. And they must have called the,
14 the ambulance and all that at that point. Cause as soon as
15 they got there, then I, you know, walked across the street to
16 get my neighbor to get the phone number of - the grandparents
17 live right next door, so somebody could go out there and make
18 sure everything was okay.

19 Q Okay. And then did you provide some information to
20 Draper City PD right after this?

21 A I wrote a brief synopsis of what happened.

22 Q Okay. And it was, was it a sworn statement that you
23 provided to the officers?

24 A When you say "sworn," what do you mean?

25 Q Well, did it say that "any false statement you make

1 (inaudible)"?

2 A No, it was, that was sworn then, yeah.

3 Q Okay. All right.

4 A (Inaudible), yeah.

5 MR. JOHNSON: And if I may?

6 MR. HILL: Yeah.

7 MR. JOHNSON: All right.

8 May I approach the witness, Judge?

9 THE COURT: Certainly.

10 Q (BY MR. JOHNSON) Do you recognize that?

11 A Yes, I do. That's my handwriting.

12 Q Was that, is that (inaudible)?

13 A That's exactly what I gave the officers.

14 MR. JOHNSON: Can I have this marked and move to be
15 admitted (inaudible)?

16 THE COURT: Do you have any objection to its
17 admission?

18 MR. HILL: No, Judge.

19 THE COURT: Okay.

20 MR. JOHNSON: Thanks.

21 THE COURT: Thank you.

22 (Defense Exhibit 1 is received)

23 (Inaudible)

24 Q (BY MR. JOHNSON) Okay. All right. Prior to Josh
25 laying on the ground, did you see him wiggling around?

1 A Huh-uh (negative).

2 Q No. And again, I'm sorry, just the obvious question,
3 anything obstructing your view?

4 A Nothing. Absolutely nothing.

5 Q All right.

6 A Absolutely nothing.

7 Q Okay. And could you see if you could give me a
8 perspective on where, you said driveway, if I was you watching
9 me, how far away are you from (inaudible)?

10 A Well, I'm in the front window of my house. It's not
11 like a small street. It's kind of just it's, cause it was
12 supposed to be I guess frontage road. But it's, so from here,
13 I guess from here to-

14 Q - me or further?

15 A It would be further.

16 Q Yeah. To that door?

17 A Perhaps.

18 Q Okay. All right. Again, that's pretty far away?

19 A Uh-huh (affirmative).

20 Q What's your vision like?

21 A With my glasses?

22 Q Yeah.

23 A I don't know, 20-20.

24 Q Did you have them on that day?

25 A Oh, absolutely. I watch, I didn't want to miss

1 anything.

2 Q Okay. All right. Okay. Anything else? Nothing.

3 Thanks. Appreciate that.

4 THE COURT: Okay, Mr. Hill, any correct?

5 MR. HILL: Yes, just briefly, Judge.

6 CROSS EXAMINATION

7 BY MR. HILL:

8 Q Ms. Torrence, just referring back to-

9 - I don't know if you still have that in front of
10 you, that witness statement?

11 THE COURT: I, I have it here.

12 MR. HILL: If I could just-

13 MR. JOHNSON: - I've got another copy if you want?

14 THE COURT: No, that's okay.

15 MR. HILL: Oh, no-

16 THE COURT: - I've read through it, so.

17 Q (BY MR. HILL) Okay. I'm just curious about the first
18 line. You stated, approximately 12:00 p.m. I "fitted the
19 neighbor."

20 A I know, I'm sorry. I was really nervous after the
21 whole thing. I wrote it out really fast.

22 Q Okay.

23 A Cause I want, I didn't know how soon they needed it.
24 So I just - it's supposed to be "witnessed."

25 Q Well, yeah, and I assumed so. I just wanted to make

1 sure.

2 A Right, right, right. I got it, I know. I mean.

3 Q I just, yeah, didn't want to assume anything.

4 A I didn't "fitness" anything.

5 Q Okay. And this, how all, how long after you observe
6 all this do you write this statement?

7 A After the whole thing ended? Like right after-

8 Q - what-

9 A - right after the, they got there to take care of
10 him.

11 Q Okay.

12 A To take care of his injuries. It was like right
13 after that. As soon as the supervisors and people started
14 showing up, I went over and told them that I saw everything and
15 they asked me to write a report.

16 Q Okay. So what's the time frame from the time you see
17 these events to the time you write the report - if, if you can
18 (inaudible)?

19 A Probably 15-20 minutes.

20 Q Okay. So it's, it's fairly-

21 A - oh, absolutely.

22 Q Okay. Now you are a flight attendant, correct?

23 A Correct.

24 Q Are you working that day, well, I'm mean, obviously
25 you're not at the airport-

1 A - yeah-

2 Q - but are you going to work, gonna go to work that
3 day?

4 A No. I was off.

5 Q Okay. You're not, you're off here in town?

6 A (No audible response).

7 Q Okay. Had you had anything to drink that?

8 A No. Absolutely not.

9 Q Any prescription medications?

10 A Well, I just take one.

11 Q What's that?

12 A It's a generic form of Lexapro.

13 Q Okay.

14 A It's cause I'm going through menopause and I don't
15 want yell at anybody.

16 Q Well, yeah, and I don't-

17 A - that's the truth.

18 Q That's what, that's what we're asking here.

19 A And my job is kind of difficult, right?

20 Q Sure. I understand. And I, and I don't mean to, to
21 ask you for any other reason. I'm just trying to establish
22 (inaudible)-

23 A - that's all, I just take-

24 Q - if you're taking anything that affects your-

25 A - no, not like that-

1 Q - perception, ability to perceive things?

2 A No.

3 Q Does it affect your eyesight at all?

4 A No.

5 Q Okay. Does it affect your mood at all?

6 A Well, yeah, it makes me not want to yell at people.

7 Q Okay.

8 A So you know what I mean?

9 Q Yeah, no, I do. I do. That's fine.

10 A It's hard dealing with the public.

11 Q Okay. So, so you stated that, and I just want to
12 make sure we're, we're I'm standing here that from where you're
13 sitting (inaudible) is about to that back door that you can?

14 A Perhaps, yeah.

15 Q See this. Okay. So, and so, what, what sort of
16 yard, do you have yard in your front yard?

17 A I do.

18 Q Okay. And-

19 A - (inaudible)-

20 Q - how big of a yard is that? I mean, dimensions,
21 but, I mean, from me to you, am I (inaudible) window?

22 A No.

23 Q Okay.

24 A You're not in my yard.

25 Q Okay. So it's smaller than that, so.

1 A Oh, yeah.

2 Q Okay. So.

3 A Now you're standing on my sidewalk.

4 Q Okay. (Inaudible) sidewalk. And then so there's a
5 street here?

6 A Correct.

7 Q And then other side of (inaudible)?

8 A Correct, their house, right.

9 Q Got ya. When you walk over to, well, and if I'm
10 remembering correctly, you say you walk over to the scene?

11 A When I, when - after the whole thing happened, once
12 he was, the paramedics and people got there, I went out my
13 garage door, across the street to Heidi's house, my neighbor
14 that lives next door to them.

15 Q Okay.

16 A And went and got her to see if we could get the phone
17 directory list for our ward.

18 Q Okay.

19 A And, to get the grandparent's phone number. So went
20 to her next door neighbor's to get it.

21 Q Oh, I see. So, okay.

22 A They had it. She didn't have it with her.

23 Q So, and I guess, and so when you come to where the
24 police officers are, in that area I guess is what I'm referring
25 to, do you talk to anybody, say anything to anybody there?

1 A Yeah, I did.

2 Q What do you say?

3 A I told, there was a sergeant standing by his truck
4 and some people and I walked over to them cause I didn't want
5 to get involved with that. So I went over and told him, I just
6 wanted you to know I saw what happened in case you want me to
7 write a report.

8 Q Got ya. And do you remember talking to anybody
9 related to Joshua, at the scene there?

10 A The only person I talked to was his, it's a family
11 member named Mary Lou, I think.

12 Q Do you know what her relationship to the defendant
13 is?

14 A I don't remember.

15 Q Okay.

16 A I know she, I think she's a family member.

17 Q What do you say to her when you get there?

18 A I told her I saw everything.

19 Q Okay.

20 A Cause there, and then she was telling me just to let
21 everybody handle. And I'm like, Let everybody handle it?
22 There's, the, so.

23 Q Okay.

24 A But-

25 Q - did you say anything to the effect, We got 'em?

1 A Pardon me?

2 Q Anything to the effect, We got 'em? Or?

3 A We got 'em? We got who?

4 Q I'm asking you did you ever say anything like that?

5 A We got 'em? I don't think so.

6 Q Okay.

7 A But you're talking back in May. But I don't know
8 what you would mean by that, by me saying, You got 'em?

9 Q That's fine.

10 A Doesn't sound like something I'd say.

11 Q Okay. So, and you stated, let's see, what time did
12 you wake up that morning?

13 A What time did I wake up that morning?

14 Q Yeah.

15 A I don't remember. Like, usually like 9:30-10:00.

16 Q Okay. So - and what I'm getting at, you're not
17 rolling out of bed as you're standing in the window. I mean,
18 you've been up for a while?

19 A Yeah. I've been up for like-

20 Q - I don't know, I don't - I don't know what a
21 schedule of a flight attendant is so I'm just trying to-

22 A - usually you sleep when you get the opportunity to.

23 Q Okay. And that's why-

24 A - but I didn't just roll out of bed and like go to my
25 window. I was already, I had been up for a little while.

1 Q Okay. Fair enough. And now, you stated a lot of
2 things on direct that I think were inferences from what you
3 saw. But when you see, so when you see Joshua up against the
4 truck, you try to, you say he turns his head and you think he's
5 saying something?

6 A Yeah. You could see his lips are moving.

7 Q Okay.

8 A He's saying something, you know, he's trying to talk
9 to the officer behind him. He's saying something. But he's,
10 you know, you can only talk, turn so far, so his head is just
11 like looking directly at my window, you know, directly in my,
12 where I'm at.

13 Q Okay.

14 A Towards me.

15 Q And, and then your perception is that that angered
16 the officer?

17 A He obviously said something and that pissed off the
18 cop and the cop lost it. That's exactly what I thought.

19 Q Okay.

20 A He was just talking. And then he grabbed him and
21 just threw him on the ground.

22 Q Well, you don't know, I mean, if the officer was mad?

23 A I don't know if he's mad, no.

24 Q Okay.

25 A But I know if, obviously, if he said something, he

1 threw him on the ground.

2 Q No-

3 A - said something that pissed him off.

4 Q Okay. In your perception?

5 A In my perception.

6 Q Okay. Where is, so where is the officer standing?

7 When, when he turns his head like that and he talks to him, can
8 you describe how the officer is standing behind him?

9 A How he is standing behind him?

10 Q Right.

11 A He's just standing behind him.

12 Q Okay. Well, I mean, what I'm getting at, okay, so I
13 can be directly behind someone, I can still behind them if I'm
14 on this side. So, I mean, is he, I mean, (inaudible)?

15 A Right.

16 Q You understand what I'm saying?

17 A Yeah, pretty much like that, yeah.

18 Q Okay.

19 A Right behind him.

20 Q Okay. And is he close to him?

21 A He was probably this far away from him.

22 Q So you're indicating two feet?

23 A Is that two feet?

24 Q I don't know. I'm asking - I'm horrible at judging
25 distances.

1 A As am I.

2 THE COURT: Looks more like a foot to me.

3 THE WITNESS: You're going with the commercial aren't
4 you?

5 THE COURT: Foot long, (inaudible), yeah.

6 MR. HILL: Okay.

7 THE COURT: That looks like maybe a foot, 18 inches.

8 MR. HILL: Okay. Fair enough.

9 THE COURT: From what I can see of her fingers.

10 MR. HILL: Okay. I don't have any further questions,
11 Judge. Thank you.

12 MR. JOHNSON: Just some followup, I'm sorry about
13 that, Ms. Torrence.

14 REDIRECT

15 BY MR. JOHNSON:

16 Q When you indicated you wanted to volunteer to law
17 enforcement, you said you spoke to a sergeant?

18 A Correct.

19 Q You wanted to give them some information?

20 A Correct.

21 Q How did the sergeant react to that?

22 A He was, he gave me a clipboard and was fine with it.

23 Q Okay.

24 A And then he came over to my house and talked to me
25 inside the house.

1 Q Okay. And then Mr. Hill was asking you a question
2 about something and you, you stopped midstream. Something
3 about "let him handle it." Would you just finish that thought
4 for me?

5 A Oh, when she said I? Cause apparently the, when the
6 family, the grandparents had come over, they had asked the
7 officers what had happened. And they had told them that story,
8 whatever their story was. And so they were saying, they
9 thought what I, I, how do I say this?

10 Q As honestly as possible.

11 A They said that, what they said wasn't true. So the
12 family, well, she thought that, you know, just let the officers
13 handle it, Kathy, you don't know what's going on. You don't
14 know what the family's been through. And I go, yeah, but I
15 know what I've seen. I know what I saw. I knew exactly what I
16 saw.

17 Q Okay. Thank you.

18 A You're welcome.

19 MR. JOHNSON: That's all I have.

20 THE COURT: You may step down, thank you.

21 MR. JOHNSON: Judge, we're not gonna call any further
22 witnesses. I've had a chance to talk to my client. He knows
23 he has-

24 THE ?WITNESS: (Inaudible).

25 THE COURT: - yes, thank you.

1 MR. JOHNSON: - an opportunity to testify at this
2 point and it would be my advise to him (inaudible).

3 THE COURT: Okay.

4 Does the State have anything further?

5 MR. HILL: No, Judge. I will save the argument for
6 rebuttal.

7 THE COURT: Okay.

8 MR. JOHNSON: And may I excuse this witness?

9 THE COURT: Certainly.

10 You may be excused, ma'am.

11 THE COURT: Mr. Johnson, do you have any argument? He
12 wants to save it for rebuttal.

13 MR. JOHNSON: Well, yes, Judge. I, I do. I'm not
14 gonna call it anything short of a mistake in judgment, but I
15 think that there has been sufficient testimony. And I know
16 that at the, the level of a preliminary hearing it's a very
17 minimal threshold, Judge. Clear and convincing evidence at
18 best, at best, that a crime has been committed and this is the
19 individual who committed it. There's no doubt that there is
20 issues about a DUI. We stipulated to that. What there is
21 doubt about, and I think it's beyond 50 percent, is the fact
22 that my client did not attempt to disarm this peace officer.
23 We have a (inaudible) person. And also, so that takes care of
24 the first degree felony. In, in disarming or attempting to
25 disarm.